

REMARKS

In the Office Action dated 25 May 2004, the Examiner continued the rejection of Claims 1-56 as being obvious under 35 USC Section 103(a) in view of six references including: (1) Walker et al., USPN 6,418,415, (2) an article by Charles R. Duke from the Journal of Product and Brand Management, 1994, Volume 3, Issue 2, page 15; (3) Pallakoff, USPN 6,269,343; (4) Shoham et al., USPN 6,584,451; (5) Shkedy, USPN 6,260,024; and (6) Tozzoli et al. USPN 6,151,588.

Applicant traverses the Examiner's rejection of the pending claims and submits the following arguments in support of patentability of the pending claims.

Applicant will first review the primary references relied upon by the Examiner. Then, the differences between the pending claims and the primary references relied upon by the Examiner will be discussed and the pending claims will be differentiated from the prior art. Finally, the combinations of prior art references suggested by the Examiner will be traversed.

THE SCOPE AND CONTENT OF WALKER ET AL

The Walker et al. reference is owned by Priceline.com Incorporated. Priceline.com is well known as an e-commerce site which allows a buyer to "name your own price". It is used mostly for services such as air travel, hotels and rental cars. The Walker et al patent is very consistent with this e-commerce model, and it may in fact be Priceline.com's basic patent on its approach. Walker et al also specifically discusses application of its system for the sale of insurance.

The concept of Walker et al. is to provide a system which aggregates “conditional purchase offers,” which are also referred to as “CPOs.” The conditional purchase offers **originate from buyers**, not from sellers. Accordingly, it is fair to characterize Walker et al. as a “buyer-side” system, as opposed to a “seller-side” system.

OFFER AGGREGATION AND PRESENTATION: A CPO management system is required by Walker et al. It is an automated system. It operates to receive conditional purchase offers from buyers, to evaluate them, and possibly to **aggregate them prior to presentation to possible sellers**. The CPO management system acts as an agent for the buyers and tenders the conditional offers to a **number** of potential sellers for evaluation. Presumably, economic advantage is obtained for the buyers because of the competition between airlines for air travel, between car rental agencies for rent cars, and between hotels for hotel rooms. Walker et al is very clear on this point: the buyers’ offers are sent to **multiple potential sellers**. This is set forth in the specification of Walker et al., commencing at Column 2, line 60, which reads in relevant part as follows, with emphasis supplied:

“The aggregate CPO management system processes each received CPO to determine **whether the CPO should be provided to sellers individually and/or collectively as part of an aggregate CPO, comprised of a plurality of individual CPOs**. If a seller accepts a given CPO, either individually or collectively, as part of an aggregate CPO, the aggregated CPO management system binds the buyer(s) on behalf of the accepting sellers, to form one or more legally binding contracts.”

The approach of Walker et al. is clearly a **buyer-side approach**. This is especially true when one considers that Walker et al. expressly teaches that the buyers may place one or more conditions on their offers, which is why the CPOs are “conditional” purchase offers. Walker et al. does not teach a system which only or fully represents a seller’s interests; in fact, Walker et al

– just like the Priceline.com web site- utilizes the group buying power of aggregated offers to obtain good commercial terms for its customers: **the buyers**. In Walker et al the buyer determines both the **price** and the **conditions** of the offer. Each of these will now be addressed.

THE BUYER-IMPOSED PRICE: In Walker et al, the **buyer** determines the **price** associated with the offer. The potential sellers do not propose a price, and the potential sellers do not make a counteroffer with respect to price. So the Priceline.com strategy of having the buyer set the price is met. In accordance with Walker et al, the potential sellers **merely react** to the proposed buyer price. Applicant directs the Examiner's attention to the text of Walker et al at Column 3, commencing at line 2, which reads in relevant part as follows, with emphasis supplied:

“A CPO is a binding offer containing one or more conditions submitted by a buyer for the purchase of goods or services or both, such as travel or insurance services, **at a buyer-defined price.**”

THE BUYER-IMPOSED CONDITIONS: The types of conditions which buyers may place on CPOs are best understood with reference to the concrete examples given by Walker et al. The conditions can be significant, and include monetary terms, such as the price offered by the buyer, and **non-monetary terms**, such as the **grade of service** requested and the **dates** that the services are needed. All the concrete examples given in Walker et al. relate to the purchase of insurance, rental cars and airline tickets. These examples are completely consistent with the Priceline.com website and e-commerce model.

THE CONCRETE EXAMPLES OF BUYERS' OFFERS: In Walker et al, the buyer can specify a great number and different types of conditions. For

example, for air travel, a buyer can specify: origin, destination, departure and return dates and times, connecting flights, stopovers, preferred airlines, flights, seat assignments, seat class, aircraft type, refund and change rules, and maximum layover time.

Applicant will now review several concrete examples which are described and depicted in Walker et al. Applicant directs the Examiner's attention to Figure 7 which depicts a number of CPOs, including the conditions which are attached by individual buyers to each particular CPO. Figure 7 is reproduced below.

CPO NUMBER 760	STATUS 765	SUBJECT 770	PRICE 775	EXPIRATION DATE 780	CONDITIONS 785	BUYER ID NUMBER 790
8123	AGGREGATE	AIRLINE TICKETS	\$350	7/5/97	ROUND-TRIP JFK TO LAX, LEAVE 7/14, RETURN 7/21	12345
8124	AGGREGATE	AIRLINE TICKETS	\$300	7/10/97	ROUND-TRIP JFK TO LAX, LEAVE 7/14, RETURN 7/21	56789
8125	AGGREGATE	AIRLINE TICKETS	\$410	7/10/97	ROUND-TRIP JFK TO LAX, LEAVE 7/14, RETURN 7/21	98765
8126	COMPLETED	CAR RENTAL	\$200	7/15/97	MID SIZE CAR, 8/1 TO 8/8	88888
8127	ACTIVE	AIRLINE TICKETS	\$250	7/30/97	ROUND-TRIP JFK TO ORL, LEAVE 8/15, RETURN 8/21	77777
8128	ACTIVE	CAR RENTAL	\$300	7/30/97	LUXURY CAR, 8/1 TO 8/8	89898
8129	AGGREGATE	AUTO INSURANCE	\$500	7/30/97	6 MONTH TERM 1987 FORD TEMPO DRIVER RISK LEVEL 17	22222
8130	AGGREGATE	AUTO INSURANCE	\$1,000	7/30/97	1 YEAR TERM 1987 FORD TEMPO DRIVER RISK LEVEL 10	33333
8131	AGGREGATE	AUTO INSURANCE	\$725	7/20/97	1 YEAR TERM 1987 FORD TEMPO DRIVER RISK LEVEL 20	44444
8132	COMPLETED	AUTO INSURANCE	\$2,000	7/10/97	1 YEAR TERM 1996 HONDA CIVIC DRIVER RISK LEVEL 15	45454
8133	COMPLETED	AUTO INSURANCE	\$3,000	8/15/97	1 YEAR TERM 1993 BMW 325 DRIVER RISK LEVEL 8	65656

FIG. 7

In Column 785, a variety of conditions are provided. These relate to a variety of CPOs which are directed to airline tickets, car rentals, and auto insurance.

For example, CPO number B123 has the following condition associated with it: "ROUND-TRIP JFK TO LAX, LEAVE 7/14, RETURN 7/21." As another example, CPO number B126 which relates to a car rental has the following condition associated with it: "MID SIZE CAR, 8/1 TO 8/8."

As yet another example, CPO number B130 relates to auto insurance and has the following condition associated with it: "1 YEAR TERM 1987 FORD TEMPO DRIVER RISK LEVEL 10."

Of course, for each of these examples, a price is specified by the buyer. In the case of CPO B123, the specified price for the airline ticket is \$350.00. In the case of CPO number B126 the car rental price specified is \$200.00. In the example of the auto insurance CPO number B130 the specified price is \$1,000.00.

ALTERNATIVES IN PROCESSING BUYERS' OFFERS: In the Walker et al. reference, four types of activities are performed including (1) aggregating the CPO with other CPOs, (2) forming a new aggregate CPO, (3) processing the CPO independently, or (4) requesting modification of the CPO terms from the buyer.

Three of the actions are described in the specification commencing at Column 7, line 63, which reads in relevant part as follows:

"Once the terms of the CPO have been received by the aggregate CPO management system 100, the central controller 200 will execute a CPO aggregation process 1300, discussed below in conjunction with Figures 13a through 13c, to receive a CPO from a buyer and to determine whether the CPO should be (i) included with a pending aggregate CPO, (ii) included with

one or more pending CPOs to form a new aggregate CPO, or
(iii) processed independently.”

The specification discusses the fourth possible action of asking a buyer to modify a CPO commencing at Column 13, line 50, which reads in relevant part as follows:

“If, however, it is determined during step 1318 that the received CPO does not meet the criteria necessary to add the individual received CPOs or pending aggregate CPO, then a further test is performed during step 1320 to determine if the conditions, price and expiration date of received CPO meet the criteria in record 810 of the aggregation rules’ database 800 to submit a request to the buyer to modify the conditions to meet the conditions of a pending aggregate CPO.”

CONCRETE EXAMPLES OF AGGREGATION RULES: The aggregation rules are software implemented processes in which the CPO management system determines how to handle the buyers’ offers. How the conditional offers are processed can take into account the sellers’ interests in the manner that the CPOs are aggregated and presented to the sellers. Applicant directs the Examiner’s attention to Figure 8 of Walker et al. which illustrates exemplary aggregation rules which are executed by the CPO management system. A copy of Figure 8 is reproduced below.

800

AGGREGATION RULE 830	CRITERIA NECESSARY TO EXECUTE RULE 840
805 ADD BUYER'S CPO TO AGGREGATE CPO IN PROGRESS	BUYER'S CPO PRICE \geq (.80) AGGREGATE CPO PRICE BUYER'S CONDITIONS = AGGREGATE CONDITIONS BUYER'S CPO MUST EXPIRE ON OR AFTER AGGREGATE CPO
810 SUBMIT REQUEST FOR BUYER TO CHANGE CONDITIONS TO MEET AGGREGATE CONDITIONS	BUYER'S CPO PRICE \geq (.70) AGGREGATE CPO PRICE BUYER'S CONDITIONS \geq (.75) AGGREGATE CONDITIONS BUYER'S EXPIRATION DATE MUST NOT BE MORE THAN 3 DAYS EARLIER THAN AGGREGATE CPO EXPIRATION DATE
815 FORM A NEW AGGREGATE INCLUDING BUYER'S CPO AND EXISTING CPO	BUYER'S PRICE \geq (.80) EXISTING CPO PRICE BUYER'S CONDITIONS = EXISTING CPO CONDITIONS BUYER'S CPO MUST EXPIRE ON OR AFTER EXISTING CPO
820 SUBMIT REQUEST FOR BUYER TO CHANGE CONDITIONS TO MEET CONDITIONS OF EXISTING, SIMILAR CPO	BUYER'S CPO PRICE \geq (.70) EXISTING CPO PRICE BUYER'S CONDITIONS \geq (.75) EXISTING CPO CONDITIONS BUYER'S CPO EXPIRATION DATE MUST NOT BE MORE THAN 3 DAYS EARLIER THAN EXISTING CPO EXPIRATION DATE

Column 830 includes the four types of activities discussed above, while Column 840 provides exemplary criteria necessary in order to execute the

particular aggregation rule. Essentially, these aggregation rules determine how far off a particular CPO is in its terms and conditions to other CPOs. Some of the factors include price, conditions, and time constraints.

REQUESTS THAT BUYERS' MODIFY CONDITIONS: Figure 10 depicts a scenario in which alternate conditions are requested of the buyers. The specification describes an alternate condition request database commencing at Column 12, line 5, which reads in relevant part as follows:

"Fig. 10 illustrates an exemplary alternate condition request database 1000 that preferably records the original and modified conditions associated with a CPO, if the aggregate and the CPO management system 100 requests a buyer to modify the terms of the CPO so that it may be included in an aggregate CPO."

Walker et al provides concrete examples of the use of the modified conditions. Applicant directs the Examiner's attention to Figure 10. A Copy of Figure 10 is included below.

1000

CPO NUMBER 1030	BUYER ID NUMBER 1035	SUBJECT 1040	ORIGINAL CPO CONDITIONS 1045	ORIGINAL CPO PRICE 1050	ORIGINAL CPO EXPIRATION DATE 1055	ALTERNATE CONDITIONS REQUESTED 1060	ALTERNATE PRICE REQUESTED 1065	ALTERNATE EXPIRATION DATE REQUESTED 1070	BUYER RESPONSE 1075
B123	12345	AIRLINE TICKETS	ROUND-TRIP JFK TO LAX, LEAVE 7/14, RETURN 7/21	\$350	7/5	N/A	N/A	7/10	ACCEPTED
B128	89898	CAR RENTAL	LUXURY CAR 8/1 TO 8/8	\$300	7/30	MID-SIZE CAR 8/1 TO 8/8	N/A	N/A	REJECTED
B124	56789	AIRLINE TICKETS	ROUND-TRIP JFK TO LAX, LEAVE 7/15, RETURN 7/22	\$300	7/10	ROUND-TRIP JFK TO LAX, LEAVE 7/14, RETURN 7/21	N/A	N/A	ACCEPTED
B129	22222	AUTO INSURANCE	6 MONTH TERM 1987 FORD TEMPO	\$500	7/30	1 YEAR TERM 1987 FORD TEMPO DRIVER RISK LEVEL 17	\$1,000	N/A	ACCEPTED

In CPO number B126, the buyer requested a luxury car; presumably, none were available so the CPO management system asks the buyer (as set forth in Column 1060) if he or she would modify the conditional purchase offer to specify a "mid-size car." So the buyer is asked if he or she can accept a

significant change in the services being sought: a downgrade in the **class** of rental car requested.

Another example is that of CPO number B124. The buyer requested a round trip from JFK to LAX, leaving on 7/15 and returning on 7/22. Presumably, these conditions could not be met (no seats were available) or would not be met (seats are available but the airline has other planes that it determines are more important fill or more profitable to fill), so the buyer is queried as to whether he or she could modify the conditional purchase offer to a round trip from JFK to LAX leaving on 7/14 and returning on 7/21. Note that the proposed alternative condition would require the **departure one day earlier** than requested and would require a **return one day earlier** than requested, so it is a very **significant change** to the travel plans. Of course, the CPO management system determines whether or not these alternate conditions are accepted by the buyer. See Column 1075.

DIFFERENCES BETWEEN THE WALKER ET AL. REFERENCE AND INDEPENDENT CLAIMS 1, 20, and 39

Walker et al differs significantly from the present invention as claimed. The differences include, but are not limited to, the following specific differences:

(1) **WALKER ET AL DOES NOT TEACH MILESTONE PRICING:** The present invention as claimed requires that **pricing milestones** be provided. In Walker et al, **only** the buyers propose a price. There is no alternative or exception discussed in Walker et al which allows pricing to be proposed by sellers. In Walker et al, the buyer's proposed price has **nothing whatsoever** to do with pricing milestones. Instead the price offered by the buyer likely only relates to how much money the buyer has available for the purchase, and/or how badly he or she wants to purchase the service. Only **substantial involvement** by the seller could obtain a situation in which the prices correspond to

milestones. Walker et al teaches **no involvement** in the pricing by the seller; the seller is passive and merely reacts to the prices proposed by the buyers, by either accepting or rejecting the price. Additionally, the buyer in Walker et al sets non-monetary conditions on the offer in addition to the buyer-established price; these conditions are quite material and include stipulations relating to the nature of the service, the quantity of the service, the time of the service, and the grade or quality of the service. Accordingly, it is **impossible** to conclude that Walker et al teaches the use of “pricing milestones”; in fact, in view of the foregoing considerations, taken as a whole, Walker et al **teaches away** from the claimed feature of milestone pricing.

(2) **WALKER ET AL DOES NOT TEACH PRESENTING BOTH A MANUFACTURING PHASE PRICE AND A DISTRIBUTION PHASE PRICE:** The present invention as claimed requires that **at least one pricing milestone** be provided in **each of a manufacturing phase and a distribution phase**. Walker et al does not teach this feature; Walker et al in fact teaches away from this feature since it specifically teaches that only the buyer proposes a **single price**, and that price has **nothing** to do with “milestones”. The present invention as claimed requires **at least two prices**: one in each of a manufacturing phase and a distribution phase. This is simply not taught by Walker et al.

(3) **WALKER ET AL DOES NOT TEACH THE INVOLVEMENT OF MANUFACTURERS IN DETERMINING PRICE MILESTONES:** The present invention as claimed requires the **involvement of manufacturing entities** in establishing price milestones. In fact, in the present invention as claimed, the manufacturers **alone** propose the pricing milestones, and the buyers only react to the prices offered by accepting or not accepting the manufacturer’s

offer. Walker et al does not teach the involvement of manufacturers in establishing prices; in fact, it **teaches away** from the involvement of seller in establishing price.

(4) **WALKER ET AL. DOES NOT TEACH PRICING WHICH REDUCES THE RISK TO MANUFACTURING ENTITIES:** Walker et al. at most teaches a system which may reduce the commercial risks of service providers (airlines, rental agencies, hotels, and insurance companies), but there is no concrete teaching about how manufacturers can reduce their commercial risk.

(5) **WALKER ET AL DOES NOT TEACH MULTIPLE PRICES WHICH INCREASE WITH COMMERCIAL RISK:** The present invention as claimed requires **multiple pricing milestones which correspond to an increase in commercial risk.** Walker et al does not teach such a correspondence between commercial risk and price. In fact, since Walker et al is primarily concerned with the sale of services such as air travel, hotels, and rent cars, there may be **no real connection** between price and commercial risk; many factors such as complex “yield management” models enter into whether or not a seller will accept a buyer’s proposed price, so pricing under Walker et al is more likely a function of **what the market will bear** than increases in commercial risk. Additionally, in Walker et al, the buyer sets the price without any involvement of the sellers, so the price most likely has more to do with the buyer’s **personal situation** (the money available for travel, and the necessity and urgency of the travel) than increases in commercial risk.

(6) **WALKER ET AL DOES NOT TEACH A RANGE OF PRICES WHICH CHANGE AS PRICING MILESTONES ARE EXPERIENCED:** The present invention as claimed requires that a **range of prices be established which change as pricing milestones are experienced.** Walker et al does not

address the commercial realities associated with the sale of manufactured goods. The present invention directly addresses the commercial reality. For manufactured goods, there are milestones in both the manufacturing phase and distribution phase which are “experienced” as time passes and the product goes from a concept to retail. Walker et al does not provide any range of prices which change as milestones are “experienced”.

(7) WALKER ET AL DOES NOT TEACH A SYSTEM WHICH ENCOURAGES TIMELY COMMITMENTS TO REDUCE RISK TO MANUFACTURERS:

The present invention as claimed requires that **the pricing milestones change to encourage timely commercial commitments to reduce commercial risk to manufacturing entities**. Of course, Walker et al does not specifically discuss how manufacturers could take advantage of the proposed reverse auction technique. In Walker et al there is **no** substantial teaching about **how risk is handled by the seller** even for service businesses. This is likely true since service businesses such as airlines have complex yield management systems which take into account many factors in setting prices. Presumably profit maximization is likely one goal, but certainly **many other goals** are likely pursued **simultaneously** (such as establishing new routes, supporting existing or weak routes, meeting the price changes - increases and/or decreases - of competitors, keeping personnel and equipment in or out of use, adjusting to seasonal or other market changes). Such goals may have nothing to do with commercial risk. In Walker et al there is **no revealed time element**. Since the services in Walker et al are air travel, hotel, and rent car, there may in fact be **no rational or buyer-knowable** time element related to whether or not a buyer’s offer is accepted or rejected, and there may not be any coherent relationship between such a time element and risk reduction. In Walker et al the aggregation rules (and hence the collective offers of all potential buyers in a particular time frame) may determine the existence or amount of

commercial risk, but may do so in an unpredictable way. For example, whether or not other people are interested in the same services in the same future time frame (when the services are needed), and actually express that interest in the current same time frame (when the offers are made) may determine the commercial risk experienced by the seller. As such, in Walker et al the connection between the time of either the services or the offer may have nothing to do with commercial risk. Certainly, the seller is not in control of the risk. For example, in Walker et al, the early buyers may receive the worst (highest) price, and late buyers may receive the best (lowest) price, even though the commercial risk to the airline may be the same for the early sale and the late sale. After all, the value of an unused airline seat is zero the moment a plane takes off, and the daily rental value of a rent car is zero once a day passes with an un-rented car remaining on the rental parking lot, and the value of a hotel room is zero as a day ends and it remains unrented. However, sometimes the airline or rental car agency or hotel may be able to charge a premium rate for last minute fares and rentals even though the commercial risk of loss of the seat or rental is greatest, and other times an airline or rental agency or hotel may steeply discount a fare or rental charge while facing the same amount of risk.

(8) **WALKER ET AL DOES NOT TEACH THE USE OF A MINIMUM NUMBER OF ORDERS TO BIND A MANUFACTURER:** In the present invention as claimed the manufacturers specify a **minimum number of articles** which must be ordered before a conditional offer becomes binding on the manufacturers; there is no clear teaching of such a feature in Walker et al; in fact, in Walker et al, there is no discussion whatsoever about what considerations are taken into account by sellers in accepting or rejecting the buyers' conditional offers.

(9) WALKER ET AL DOES NOT TEACH AN AVAILABILITY INTERVAL WITH PRICE REFLECTING FUTURE SUPPLY CHAIN ACTIVITIES AND COSTS:

In the present invention as claimed a **period of availability** is required which corresponds to the **cost of future supply chain activities** or **savings related to avoidance of future supply chain activities** and these factors are **reflected** in the offer price; Walker et al does not teach or suggest such a feature, as the sale of services does not really involve supply chain costs and/or supply chain activities.

Below find a claim chart which compares claim 1 (with emphasis supplied) to Walker et al. Independent claims 20 and 39 contain similar limitations, so, in order to simplify the exposition, only independent claim 1 is examined in claim chart form.

<p>1. (Currently Amended) A method of selling articles of manufacture, comprising:</p> <p>(a) providing an electronic communication system which is available to a plurality of potential purchasers of said articles of manufacture;</p> <p>(b) utilizing said electronic communication system to identify a plurality of articles of manufacture, from a plurality of manufacturing entities, which are available for purchase by said plurality of potential purchasers;</p> <p>(c) for selected ones of said plurality of articles of manufacture which are available for purchase, identifying pricing milestones in</p>	<p>(c) Walker et al does not teach or suggest the use of pricing milestones. Walker et al. does not mention or suggest consideration of pricing milestones in each of a</p>
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<p>each of (1) a manufacturing phase and (2) a distribution phase, which correspond to an increase in commercial risk;</p> <p>(d) through prior arrangements with said plurality of manufacturing entities, determining a separate price for each of said pricing milestones to establish a range of prices for said selected ones of said plurality of articles of manufacture, taking into account a change in said commercial risk as said pricing milestones are experienced, and providing a changing price to encourage and reward timely commercial commitments and to reduce the commercial risk to said plurality of manufacturing entities;</p>	<p>manufacturing phase and a distribution phase which correspond to an increase in commercial risk. None of the examples of Walker et al. are for manufactured goods. No part of the specification discusses an evaluation or consideration of such pricing milestones.</p> <p>(d) Walker et al. is a buyer-side system which receives buyers' offers with price and other non-monetary conditions. This is consistent with the basic Priceline.com model of buyer-driven options of airline tickets, rental cars, and hotels. In Walker et al., the buyer's proposed price has nothing whatsoever to do with pricing milestones. Instead the price offered by the buyer likely only relates to how much money the buyer has available for the purchase, and/or how badly he or she wants to purchase the service. This claim element specifically requires that the manufacturing entities be involved in determining a separate price for each of the plurality of "pricing milestones." Walker et al teaches away from this approach since it specifically teaches only the involvement of the buyer in setting the price; the sellers merely react to the price, and they do not make any kind of price counteroffer. Only substantial involvement by the seller could obtain a situation in which the prices correspond the milestones. This claim element requires a price range for the articles of manufacture which take into account commercial risk as the pricing</p>
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	<p>milestones are experienced There is simply no teaching in Walker et al. which would suggest this element. This claim element further requires that the changing prices encourage and reward timely commercial commitments to reduce commercial risk to manufacturing entities. There is no teaching in Walker et al. which would suggest this type of reward. This claim element requires that the commercial risk of the manufacturers be reduced. This is simply not taught by Walker et al. The present invention directly addresses the commercial reality. For manufactured goods, there are milestones in both the manufacturing phase and distribution phase which are "experienced" as time passes and the product goes from a concept to retail. Walker et al. does not provide any range of prices which change as milestones are "experienced."</p>
<p>(e) utilizing said electronic communication system to make conditional offers of said selected ones of said plurality of articles of manufacture for sale to said plurality of potential purchasers at each of said pricing milestones with said separate price, with said conditional offers specifying at least a minimum number of articles which must be ordered in aggregate before the conditional offer becomes binding upon a manufacturing entity;</p>	<p>(e) In the present invention conditional offers are made by the manufacturers of the articles. Walker et al. teaches just the opposite. In Walker et al., the potential buyers are making the offer and the conditions imposed on the offer are mostly established by the buyer not the seller. A rather complex evaluation process is utilized in order to try to match the buyers' offers to the goods and services which are available. This claim further requires that the conditional offers specify at least a minimum</p>

	<p>number of articles must be ordered in aggregate before the conditional offer becomes binding upon the manufacturing entity. Walker et al. does not teach this feature.</p>
<p>(f) utilizing said electronic communication system to separately communicate with particular ones of said plurality of potential purchasers and to aggregate commercial commitments from said plurality of potential purchasers for each of said pricing milestones and thereby selling said selected ones of said plurality of articles of manufacture; and</p>	<p>(f) This element requires the aggregation of commercial commitments for each of the "pricing milestones." Walker et al. does not teach or recognize milestones.</p>
<p>(g) wherein each pricing milestone corresponds to a period of availability in which costs of future supply chain activities or savings related to avoidance of future supply chain activities are reflected in an offer price.</p>	<p>(g) This claim element requires that "each" pricing milestone correspond to a "period of availability." The period of availability is one in which the cost of future supply chain activities or savings related to avoidance of future supply chain activities are reflected in the offer price. Walker et al. does not teach or suggest a system which takes into account supply chain activities in a manner which is reflected in an offer price. This is especially true since Walker et al. is a buyer-driven system.</p>

Independent Claim 20 includes limitations which are similar or identical to those identified above with respect to claim 1. This is clear from the following highlighted copy of independent Claim 20.

20. A method of selling articles of manufacture, comprising:

(a) providing a trusted intermediary entity;

(b) providing at least one data processing system which is under the control of said trusted intermediary entity and which includes an electronic communication system which is available to a plurality of potential purchasers of said articles of manufacture;

(c) utilizing said trusted intermediary entity to qualify said plurality of potential purchasers for participation in commercial transactions utilizing said electronic communication system;

(d) utilizing said trusted intermediary to identify a plurality of articles of manufacture from a plurality of manufacturing entities;

(e) utilizing said trusted intermediary to **negotiate a conditional offer** from each of said plurality of **manufacturing entities** for each of said plurality of articles of manufacture;

(f) wherein each conditional offer **specifies at least one price** for each of said plurality of articles of manufacture and a **minimum number** which must be ordered before said conditional offer becomes binding;

(g) for selected ones of said plurality of articles of manufacture which are available for purchase, identifying a **pricing milestone** in each of (1) a **manufacturing phase** and (2) a **distribution phase**, which correspond to an **increase in commercial risk**;

(h) determining a separate aggregate minimum order number and price for each of said pricing milestones to establish a **range of different prices** for said selected ones of said plurality of articles of manufacture, **taking into account an increase in said commercial risk** as said pricing milestones are experienced, and providing a **change in price** to encourage and reward **timely commercial commitments** and to **reduce the commercial risk** for said plurality of **manufacturing entities**;

(i) utilizing said electronic communication system to offer said selected ones of said plurality of articles of manufacture for sale to said plurality of potential purchasers at each of said pricing milestones with said separate price; and

(j) utilizing said electronic communication system to offer said plurality of articles of manufacture for sale in the form of a conditional offer and to separately communicate with particular ones of said plurality of potential purchasers in order to aggregate commercial commitments from said plurality of potential purchasers and to meet said separate **aggregate minimum order number** for each of said pricing milestones and thereby making said conditional offer binding upon a particular

manufacturing entity of a particular one of said plurality of articles of manufacture; and

(k) wherein each pricing milestone corresponds to a period of availability in which costs of future supply chain activities or savings related to avoidance of future supply chain activities are reflected in an offer price.

Independent Claim 39 includes limitations which are similar or identical to those identified above with respect to Claim 1. This is clear from the following highlighted copy of independent Claim 39.

39. A method of selling articles of manufacture, comprising:

(a) providing a trusted intermediary entity;

(b) providing an virtual exchange which allows for a relatively direct, aggregated, and moderated series of commercial interactions between a plurality of manufacturers of articles of manufacture and a plurality of potential purchasers of said articles of manufacture, which is under control of said trusted intermediary entity;

(c) providing at least one data processing system which is under the control of said trusted intermediary entity and which includes an electronic communication system which is utilized to enable said virtual exchange and which is available to said plurality of manufacturers of said plurality of articles of manufacture for offering for sale through said virtual exchange said plurality of

articles of manufacture and to a plurality of potential purchasers of said plurality of articles of manufacture;

(d) utilizing said trusted intermediary entity to qualify said plurality of potential purchasers for participation in commercial transactions utilizing said electronic communication system;

(e) utilizing said trusted intermediary entity to **obtain production guarantees** from said plurality of manufacturers of said plurality of articles of manufacture, in the form of a **conditional offer** each of which is binding upon said plurality of manufacturers if an **aggregate minimum number** of orders is obtained in a predetermined amount of time;

(f) utilizing said electronic communication system of said virtual exchange to identify a plurality of articles of manufacture which are available for purchase by said plurality of potential purchasers through said virtual exchange;

(g) for selected ones of said plurality of articles of manufacture which are available for purchase, identifying a **pricing milestone** in **each of (1) a manufacturing phase and (2) a distribution phase**, which correspond generally to an increase in commercial risk;

(h) determining a separate price for each of said plurality of pricing milestones to establish a **range of changing prices** for said selected ones of said plurality of articles of manufacture, **taking into account a change in said commercial risk experienced by said plurality of manufacturers** of said selected ones of said

plurality of articles of manufacture **as said pricing milestones are experienced**, and providing a changing price to said plurality of potential purchasers to **encourage and reward early commercial commitments** and to **reduce commercial risk** to said plurality of manufacturers;

(i) utilizing said electronic communication system of said virtual exchange to offer said selected ones of said plurality of articles of manufacture for sale to said plurality of potential purchasers at each of said plurality of pricing milestones with said separate price;

(j) utilizing said electronic communication system of said virtual exchange to separately communicate with particular ones of said plurality of potential purchasers and to **aggregate commercial commitments** from said particular ones of said plurality of potential purchasers for each of said pricing milestones in order to meet said **aggregate minimum number of orders** for said selected ones of said plurality of articles of manufacture; and

(k) wherein each pricing milestone corresponds to a period of availability in which costs of future supply chain activities or savings related to avoidance of future supply chain activities are reflected in an offer price.

As demonstrated, independent Claims 1, 20 and 39 (but not necessarily in any other, future, related, or continuation claims) require:

1. the use of pricing milestones in general;

2. the use of at least one pricing milestone from each of a manufacturing phase and a distribution phase;
3. the involvement of manufacturers in setting the pricing milestones;
4. pricing which reduces the commercial risk of manufacturing entities;
5. prices which change as commercial risk increases;
6. pricing milestones which represent a range of prices which take into account changes in commercial risk as milestones are experienced;
7. the use of pricing changes to encourage and reward timely commercial commitments;
8. the requirement that the seller's offer be conditioned on reaching a minimum number of orders before there is a binding agreement; and
9. with the pricing milestones corresponding to a period of availability in which the costs of future supply chain activities or savings related to the avoidance of future supply chain activities are reflected in the offer price.

These features are not taught or suggested by Walker et al.

SCOPE AND CONTENT OF THE DUKE ARTICLE

The Duke article proposes a logical construct or "price strategy matrix" which can be utilized as an analytical tool to allow product manufacturers to determine and execute pricing strategies.

In the "Abstract" of the article, the paper is summarized as presenting a "modified version of the Tellis price strategy matrix." In order to "enable coordinated market issues and company strategies by directing emphasis on pricing issues and techniques that are appropriate and effective, given the consumers' (or segments') as well as the companies' objectives, as constrained by the competitive nature of the products' market."

DUKE DOES NOT TEACH ANY SPECIFIC SOLUTION: It is perfectly clear that Duke proposes the matrix as an analytical tool and **not a specific solution** to particular market situations. This is also made clear in the Abstract which reads in part as follows:

“By using this type of matrix as a guide, product managers can quickly evaluate the appropriate issues of concern for a given pricing decision and then progress toward a pricing decision with more confidence.”

The article commences by criticizing the then—current state of pricing techniques. It criticizes pricing as being a “seat of the pants” activity. It also states that many product managers have “no guidelines.” for selecting an appropriate pricing tactic. The current processes are further criticized as being considered as a “linear” decision which isolates pricing decisions from other considerations. However, the Duke article does not propose or pretend to provide any specific solutions which are superior to the then—current state of pricing techniques. The approach of Duke is merely suggested as **some type of analytical tool**. This is clearly set forth in the article on page 2, which reads in relevant part as follows, with emphasis supplied:

“This **framework** is not intended to replace current training or customary pricing tactics. Rather, it provides a **supplementary structure** to help **understand** current operations, **express** to management the **reasons** for pricing movements in the past, as well as price forecasts, and **illustrate** appropriate **tactics** for **varied issues**.”

DUKE’S CRITIQUE OF THE PREVIOUS TECHNIQUES: On page 2 of the article, Duke proceeds to provide an overview of the then-conventional pricing strategy frameworks. Some of the specific techniques discussed include the utilization of scanner information at point of sale by large retailers in order to enhance and develop a pricing strategy, the use of premium

pricing for unique products, the more common technique of “standard marked-up pricing” which utilizes average costing and “target return pricing.”

Next, in the section entitled “Current Pricing Decision Analysis,” Duke critiques the then-existing analysis processes for pricing. In general, Duke critiques the prior pricing approaches as being representative of a “linear model” which progresses one step at a time for the pricing decisions.

Duke surveys the textbook approaches to pricing and identifies on page 3 a variety of textbook approaches. First, he considers “company philosophy” and identifies some typical philosophies as “profit maximization, sales volume, market share, target return on investment level, status quo, and survival.” Duke then surveys different types of pricing “policies” and identifies the following particular pricing policies: “price skimming, penetration pricing, life-cycle pricing, above-at-below competitors, and customer value.” Duke then identifies three particular methods of calculation as being “cost-based, competitive-based, or demand-based.” Next, Duke identifies common reasons for discounting from price lists as including “variations in quantity, season, credit, special sales, or for allowances to the distribution channel to perform services.” Finally, Duke identifies adjustments in pricing which are made due to “geographic considerations” which includes pricing based on “shipping zones” as well as other “distribution” related topics.

An alternative to the linear “textbook” approach is “strategy-based” pricing. This is discussed by Duke on page 3 under the heading “Strategy-Based Pricing Decisions.” Duke provides an overview of what is meant by “strategy-based” pricing. Essentially, it is an approach which considers (1) the company’s objectives, (2) external environments, such as competition, and (3) consumer characteristics. Duke believes that these considerations

lead to a “finite set of pricing issues that are effective and appropriate in specific situations.” However, the strategy matrix does not provide any particular solution. In contrast, it merely provides a structure which allows issues to be discussed or addressed. This is clear from the text on page 3, which reads in relevant part as follows, with emphasis supplied:

“The strategy matrix offers a structure to **discuss** basic pricing strategies based on economic theory and practice. ”

. . . additionally, it permits the manager to **select appropriate pricing issues** within the framework of current competitive operations.”

DISCUSSION OF THE TELLIS MATRIX: At the bottom of page 3 of the Duke article, under the heading “A Price Strategy Matrix,” Duke provides a brief overview of a price matrix which was proposed by Tellis in 1986. Tellis proposed a three by three matrix, with the **horizontal dimension** being made up of components which are representative of **company objectives**, and with the **vertical dimension** representing **consumer characteristics**.

The horizontal dimension includes: (1) **differential pricing**, (2) **competitive pricing**, and (3) **product line pricing**.

The vertical dimension is made up of the following three consumer characteristics: (1) **high search costs**, (2) **low reservation prices**, and (3) **special transaction costs**.

The horizontal dimension elements will now be discussed.

“Differential Pricing Objectives” are defined as existing when “one product is sold to different consumer segments at different prices, with each segment providing some benefit to the other.”

"Competitive Pricing Objectives" are defined as the use of product prices to take advantage of some competitive position that exists with similar, but not identical, brands.

"Product Line Pricing" is defined as a situation in which the pricing strategy takes into account "multiple products in the same or different segments." In that situation, production costs in the product line should be considered, as well as marketing and promotion costs.

The vertical dimension elements will now be described.

"High Search Costs" is defined as when a consumer group places high importance on time and searches very little for product information.

The "lower reservation price" characteristic is a second consumer characteristic which deals with "differing demand for the product based on price." In this situation, some consumers want the product and are willing to pay a higher price even though a lower price is expected to occur at a later time. Another consumer segment is price sensitive and has no urgent need for the product, and buys the product as price decreases.

The "special transaction costs" characteristic in which all the consumers are affected by some other "specific issue" that is "critical to the completion of the marketing." Duke specifically identifies travel costs, investment risk, cost of money, and switching costs as examples of specific issues.

CRITIQUE OF THE TELLIS MATRIX: At the bottom of page 4, under the heading "Extending The Price Strategy Matrix," Duke identifies two drawbacks with the Tellis matrix. His first observation is that the original

Tellis matrix “intentionally excluded managerial issues such as psychological pricing, standard markups, or seasonal discounts that are rooted in behavior rather than in purely economic theory.” The second observation is that the original Tellis matrix gives the “impression that a single cell in the matrix should be used to describe all the strategy options for a certain situation. ”

Once again, Duke emphasizes that the matrix is merely an analytical tool, and does not provide specific answers for specific situations. This is made clear by the text at the top of page 5 which reads in relevant part as follows, with emphasis supplied:

“Managers should understand that the matrix provides a **checklist of potential pricing issues** but that the cells are not meant to indicate an exclusive, or singular, approach to price management. Rather, it indicates the **appropriateness** of various pricing issues applied to consumer characteristics and to company objectives given the competitive situation. **In any real life decision, multiple issues may exist coincidentally, and each issue may require a different action.**”

THE PROPOSED MODIFIED TELLIS MATRIX: Duke’s contribution to the Tellis matrix is the addition of a third “dimension” to the matrix. This dimension relates to pricing strategy. The dimension is made up of three components including: (1) **differential pricing objectives**, (2) **competitive pricing objectives**, and (3) **product line pricing objectives**.

Each one of these components is made up of three parts.

The differential pricing objectives include (1) **random discounting**, in which consumers are not aware of any pattern in promotional discounts, (2) **periodic discounting** in which the discounting pattern is predictable, and (3) **second market discounting**, in which a first market provides primary incentive to produce while the second market provides an additional outlet

that allows production and betters the economies of scale. This includes, for example, mixed branding strategies, mixed demographic strategies, and foreign/domestic market strategies.

The competitive pricing objectives include: (1) **price signaling and reference pricing** which relates to price/quality issues, and which takes into account such strategies as prestige pricing, (2) **penetration and experience curve pricing** in which a business takes advantage of lower costs to gain market share, typically early in the production life cycle, and sometimes causing leaders to set prices levels lower than production costs at least until market share goals have been achieved, and (3) **geographical pricing** which takes into account special distribution capabilities, or the consumer 's willingness to pay for geographic convenience.

The product line pricing objectives include: (1) **image pricing** in which similar products within a price line are differentiated according to image or positioning, (2) **price bundling and premium pricing**, wherein price sensitive consumers are attracted to purchase more goods and services by bundling independent products, a technique which is common in the sale of automobile options, and (3) **complimentary pricing** in which low profits from the sale of one product may be covered by the profits from the sale of a complimentary product.

DUKE'S CONCLUSIONS: The Duke article concludes in a section commencing on page 8 which is entitled "Managerial Implications and Recommendations." In this section, Duke once again makes it clear that his proposed matrix is a "**proactive tool**" which allows managers to "**examine**" their current pricing strategies and "**consider**" whether market and competitive descriptions as well as consumer market characteristics match

those of the products concerned.” Duke makes the following specific recommendation, with emphasis supplied:’

“By comparing consumer characteristics with company objectives, product managers can quickly review which strategies which **might** be appropriate for the customer segments being used to fulfill company objectives. If discrepancies are found, then managers can **reconsider** some of their standard practice. If the strategies are appropriate for the market but are not compatible with current lead express company directions, then the firm must **consider** either changing market strategies, or changing company objectives. As an **analysis tool**, marketers can **review** current practices in pricing to understand what implicit assumptions are being made in current pricing tactics or consumer characteristics of company objectives. More likely, managers can clearly **define and review** their policies and **consider** contingency options for markets and positioning products. The **framework** can be spread among others in an organization to **raise awareness** of different pricing situations and issues quickly.”

This matrix provides a better **structure** for understanding the **application** of pricing issues. At the very least, it can be used to **avoid blatant errors** in choosing price strategies.”

It is important to note that the Duke article does **not** make any **specific recommendation** for the solution of any **specific price or marketing problem**. It is merely an analytical tool which is utilized to identify issues.

THE DUKE ARTICLE CAN NOT BE APPLIED TO INDEPENDENT CLAIMS 1, 20, AND 39

The Duke article can be readily distinguished from the pending independent claims.

None of the claim elements of independent claims 1, 20, and 39 are found in the Duke article.

Duke does not offer any particular mechanism for dealing with commercial risk in the sale of manufactured goods.

Duke is so broad in its approach that it literally "says everything and means nothing".

The sheer number of analytical options presented in the three-dimensional (3 by 3 by 3 matrix) model of Duke is overwhelming. The only way that the Duke article can be applied to the present claims is to isolate particular portions and take them out of context completely.

This approach is simply not permitted by applicable law.

The Examiner must consider the reference as a "whole" and, taken as a whole, the Duke article teaches nothing relevant to the present invention as claimed.

THE LEGAL STANDARD FOR REJECTIONS UNDER 35 USC § 103: The following provides an overview of the applicable legal standards for determining "obviousness":

(1) **WHAT IS EXAMINED:** 35 U.S.C. §103 mandates that the invention "as a whole" be considered in making an obviousness determination, and reads as follows, with emphasis supplied:

"A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the **subject matter as a whole** would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made."

(2) **THE OBVIOUSNESS TEST:** In *Graham v. John Deere Co.*, 383 U.S. 1,148 USPQ 459 (1966), the Supreme Court set forth the basic test for determining if an invention is obvious, stating at 383 U.S. 17 -18:

"...the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or non-obviousness of the subject matter is determined."

(3) **TIME FRAME OF THE ANALYSIS:** 35 U.S.C. §103 mandates that the analysis be performed "at the time the invention was made" .

(4) **THE BURDENS:** The USPTO bears the burden of establishing a *prima facie* case of obviousness, as is adequately summarized in *In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992) which reads in relevant part, at 972 F.2d 1783, 1784:

"In proceedings before the Patent and Trademark office, the Examiner bears the burden of establishing a *prima facie* case of obviousness based upon the prior art [The Examiner] can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. The patent applicant may then attack the Examiner's *prima facie* determination as improperly made out, or the applicant may present objective evidence tending to support a conclusion of nonobviousness."

What is required to meet this burden and establish a *prima facie* case of "obviousness" is quite particular, as explained in *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), at 837 F.2d at 1598, 1599, 1600, with emphasis supplied:

"The PTO has the burden under section 103 to establish a *prima facie* case of obviousness It

can satisfy this burden only by showing some **objective** teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teaching of the references."

(5) **THE REQUIREMENT OF A WRITTEN EXPLANATION:** 35 U.S.C. §132 provides the standards for a written explanation of a rejection, stating in relevant part:

"Whenever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Commissioner shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging the propriety of continuing the prosecution of his application; . . .
."

(6) **IMPERMISSIBLE ACTIVITIES:** A substantial body of law exists which constrains the USPTO to proper considerations in performing an obviousness analysis. A few particular constraints are pertinent in the present application and will now be discussed.

First, obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion that the combination be made. See *In re Stencel*, 828 F.2d 751, 4 USPQ2d 1061 (Fed. Cir. 1987).

Second, the mere fact that the prior art **could** be modified as suggested by the Examiner does not make the modification obvious unless the prior art **suggested** the desirability of the modification. See *In re Laskowski*, 871 F.2d 115, 10 USPQ2d 1397 (Fed. Cir. 1989).

Third, before the USPTO may combine the disclosures of two or more prior art references in order to establish *prima facie* obviousness, there must be some suggestion for doing so, found either in the references themselves or in the

knowledge generally available to one of ordinary skill in the art. See *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Fourth, there must be some reason, suggestion or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination, and that knowledge cannot come from the applicant's invention itself. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

Fifth, it is impermissible for the USPTO to simply engage in hindsight reconstruction of the claimed invention, using the applicant's invention as a template and selecting elements from the references to fill the gaps. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

APPLICATION OF THE LAW TO THE PRESENT REJECTIONS WHICH ARE BASED IN PART ON THE DUKE ARTICLE:

In the Office Action, there is no citation to an **objective** teaching in the Duke article that would justify the combinations proposed by the Examiner.

In one rejection the Examiner combines Walker et al with the Duke article.

In another rejection, the Examiner combines Walker et al, with Pallakoff, and the Duke article.

In yet another rejection, the Examiner combines Walker et al, Pallakoff, Shoham et al. and the Duke article.

In making these rejections, the Examiner states **only** the following about what the Duke article teaches:

“Duke teaches pricing milestones (Penetration and experience curve and Geographic pricing pages 6 and 7) ”

The Examiner states **only** the following reasons for combining (1) Walker et al with Duke and (2) Walker et al, Pallakoff and Duke:

“It would have been obvious to a person having ordinary skill in the art to include in Walker the pricing strategies as taught by Duke, because this would assure that a product is substantially funded through guaranteed orders before production starts.”

There are no further explanations provided. Applicant will now address this interpretation of the Duke article.

DUKE MAKES NO REFERENCE TO PRICE MILESTONES: The Duke article does not discuss “pricing milestones”. After a careful review of the Duke article, Applicant has concluded that the **Duke article does not mention the words “pricing milestones” even once.** It is difficult to understand how the Duke article can teach anything about pricing milestones without so much as mentioning the term.

THE CITED TEXT OF THE DUKE ARTICLE DOES NOT SUPPORT THE EXAMINER’S ARGUMENT The Examiner cites specifically the section of the Duke article entitled “ Penetration and Experience Curve” which is at the bottom of page 6 and the section of the Duke article entitled “Geographical Pricing” which starts near the top pf page 7.

The section entitled “Penetration and Experience Curve” relates to the advantage that can be obtained by a company’s “cost structure”. More specifically, it is the ability to charge a competitive price due to the scale of manufacturing operations. Higher production numbers usually mean lower costs and hence lower (more competitive) prices. The lower price allows the manufacturer to gain greater market share or “market penetration” (hence the use of the word “penetration” in the section’s title).

“Experience curve” is a slightly different concept. In experience curve pricing, a market leader takes advantage of its lower costs to gain market share, even selling below production costs to gain market share. The hope or goal of this

approach is to be, at a later time, in a position to sell product at a greater profit, thus taking advantage of the "experience curve" (and hence the use of the words "experience curve" in the title of this section).

Neither one of these concepts is particularly relevant to the present invention as claimed.

The section entitled "Geographical Pricing" is no more relevant. This section deals with the ability of a company to take economic advantage of either special distribution capabilities or a consumer's willingness to pay for geographic convenience.

The Examiner argues that one would be motivated to "include in Walker the pricing strategies of Duke". Nothing in the cited text of the Duke article would teach or suggest a combination with Walker et al. As has been described above, Walker et al is Priceline.com's e-commerce concept of **letting the buyer name his own price**.

This approach can not be combined with any of the pricing approaches discussed in the specific portions of the Duke article cited in the Office Action. In other words, an approach which allows a buyer to set his own price is inconsistent with any of (1) penetration pricing, (2) experience pricing, or (3) geographical pricing.

As claimed in the present application (but not necessarily in any other, future, related, or continuation patent applications), the present invention requires:

1. the use of pricing milestones in general;
2. the use of at least one pricing milestone from each of a manufacturing phase and a distribution phase;
3. the involvement of manufacturers in setting the pricing milestones;
4. pricing which reduces the commercial risk of manufacturing entities;

5. prices which change as commercial risk increases;
6. pricing milestones which represent a range of prices which take into account changes in commercial risk as milestones are experienced;
7. the use of pricing changes to encourage and reward timely or early commercial commitments;
8. the requirement that the seller's offer be conditioned on reaching a minimum number of orders before there is a binding agreement;
9. with the pricing milestones corresponding to a period of availability in which the costs of future supply chain activities or savings related to the avoidance of future supply chain activities are reflected in the offer price.

As has been demonstrated above, Walker et al does not teach or suggest any of these features.

Neither does the Duke article teach or suggest any of these features.

If it is the Examiner's position that any of these features are taught or suggested by the Duke article, Applicant respectfully requests that the particular text portion of the Duke article be identified with specificity, and that the logical reasoning for the combination be explained fully.

SCOPE AND CONTENT OF PALLAKOFF

Pallakoff is owned by Mobshop, Inc. The basic goal of Pallakoff is to obtain volume discounts for buyers which, knowingly or unknowingly, act as a group. This purpose is clearly reflected in the company's name "MOBSHOP."

The approach of Pallakoff is quite simple. It allows sellers to communicate "conditional offers to potential buyers." Then, it aggregates demand from potential buyers. This invention allows sellers to offer "demand-based pricing" As set forth in the Abstract, **demand-based pricing** is a situation in

which prices go down as the volume of units sold in any given offer goes up.”

Pallakoff plainly states that its goal is to obtain “volume discounts” for small buyers. Applicant directs the Examiners attention to the Abstract, which reads in relevant part, as follows, with emphasis supplied:

“A seller can therefore offer **volume discounts** to buyers acting as a group, even when the buyers may not have any formal relationship with one another”

The overview of the architecture utilized by Pallakoff is set forth in the specification commencing at Column 2, line 52, and extending through Column 3, line 28. This text makes reference to Figure 1 which provides a high level overview. Figure 2 is a diagram which illustrates elements which are on a web page. This is discussed in Pallakoff at Column 3, commencing at line 48. With reference to Figure 2 and the specification commencing at Column 3, line 37, the web page includes a logo section 22 and a field 23 which corresponds to a description of the products offered. Each product that is offered has associated with it data which is maintained in fields 24, 25, and 26. The data in field 24 corresponds to the demand threshold(s). The data maintained in field 25 corresponds to the aggregated demand so far. The data in field 26 corresponds to the date/time limit for the offer.

At Column 3, commencing at line 44 of the specification, the content of field 24 is described and the following example is given:

“A field 24 which lists the price of the product in various demand levels. For example, this field might indicate:

2 to 5 - \$ 10.00
6 to 20 - \$ 8.00

21 or more - \$ 4.00

In this example, the Demand Thresholds are 2, 6, and 21. The lowest Demand Threshold is 2, meaning that the offer will be cancelled unless at least two units are sold. The Maximum Demand Threshold is 21, meaning that the price will not drop any lower than \$4.00 in this offer. The price will drop to \$4.00 only when buyers order, in aggregate, at least 21 units during the buying cycle."

Field 25 which is representative of the aggregate demand so far corresponds to the total amount of the offered product that interested buyers have collectively indicated a desire to buy. Field 26 sets forth the date/time limit on the offer. This indicates when the buying process or cycle will terminate. Field 27 is provided to allow for the posting of status messages. Field 28 is a button which allows the user to "click" in to the buying group.

Figure 3 is a flowchart diagram of the basic operation of the Pallakoff invention. This figure is described at Column 4, commencing at line 19, and extending through Column 5, line 45. Detailed flow diagrams of the operations of Figure 3 are provided in Figures 4 through 8. Figure 4 depicts the process through which a seller specifies an offer to sell a product.

Figure 5 is a flowchart representation of the process of displaying the information related to an offer. This flowchart is the process through which the web page is "populated" with product specific information. Figure 6 is a flowchart representation of the operations that occur when a potential buyer joins a buying team. Figure 7 is a flowchart representation of a processing state which occurs when an offer has been "accepted." Figure 8 is a flowchart representation of the activities which occur when the time interval associated with an offer has expired without sufficient commitments from buyers.

Figure 9 illustrates an alternative embodiment of the Pallakoff invention in which the system displays offers on one or more web sites which are operated by other web-site operators, who are different, or may be different from the system operator. This figure is described at Column 9, commencing at line 27 and continuing through Column 11, line 6.

A variety of alternative embodiments are discussed at Columns 11 and 12 of the specification. These include: (1) placing more constraints on the offer; (2) specifying different types of thresholds (3) setting both a minimum number of buyers as well as minimum value of goods; (4) offering services as well as goods; (5) allowing a buyer to express an interest that is conditional; and (6) utilizing other forms of communication other than the internet. None of these alternative embodiments significantly differ from the preferred embodiment of Pallakoff.

DIFFERENCES BETWEEN THE PALLAKOFF REFERENCE AND INDEPENDENT CLAIMS 1, 20 AND 39

Pallakoff differs significantly from the present invention as claimed.

The differences include, but are not limited to, the following:

(1) **PALLAKOFF DOES NOT TEACH MILESTONE PRICING**: The present invention as claimed requires that **pricing milestones** be provided. Pallakoff teaches a system in which the price of the goods sold goes down as the volume or number of the goods sold goes up. Pallakoff teaches doing this in discrete steps or intervals (as opposed to continuously). In Pallakoff, these discrete steps are referred to as **"demand thresholds."** Each demand threshold corresponds to a particular price. In the example quoted above from Pallakoff, the demand thresholds are 2 units, 6 units, and 21 units. Essentially, these represent **"volume discounts"**. The present invention offers something much different than **"volume discounts"**. In contrast, the

present invention utilizes “pricing milestones” which correspond to increases in commercial risk; this is quite different and much broader than “volume discounts”. In the present invention, each separate price takes into account changes in commercial risk that are experienced as time passes. In the present invention, the process steps which make up a manufacturing phase and a distribution phase are taken into account in identifying pricing milestones and attaching actual sales prices to each milestone for a particular product; so it is not fair or accurate to equate the “demand thresholds” of Pallakoff’s volume discounts with the “pricing milestones” of the present invention.

(2) PALLAKOFF DOES NOT TEACH THE USE OF BOTH MANUFACTURING PRICE MILESTONES AND DISTRIBUTION PRICE MILESTONES: The present invention as claimed requires that at least one pricing milestone be provided in each of a manufacturing phase and a distribution phase; Pallakoff does not teach this feature; Pallakoff in fact teaches away from this feature since it specifically teaches only “demand based pricing” in which the seller proposes multiple prices based solely on an increase in sales volume; there is no clear connection in Pallakoff between the prices and either a manufacturing phase or a distribution phase; there is certainly no teaching in Pallakoff that there be a price from each of a manufacturing phase and a distribution phase.

(3) PALLAKOFF DOES NOT TEACH THE INVOLVEMENT OF MANUFACTURERS IN DETERMINING PRICE MILESTONES: The present invention as claimed requires the involvement of manufacturing entities in establishing price milestones. In fact, in the present invention as claimed, the manufacturers alone propose the pricing milestones, and the buyers only react to the prices offered by accepting or not accepting the manufacturer’s

offer. Pallakoff is directed to on-line retailers and on-line buyers. There is no clear teaching about the involvement of manufacturing entities in determining price milestones.

(4) PALLAKOFF DOES NOT TEACH PRICING WHICH REDUCES THE RISK TO MANUFACTURING ENTITIES: The present claims require a system which includes pricing which reduces the risk to manufacturing entities; in Pallakoff, there is no clear teaching on how manufacturing entities can reduce their risk. Pallakoff is concerned primarily with obtaining volume discounts for buyers, so the interests of manufacturers are not protected by Pallakoff.

(5) PALLAKOFF DOES NOT TEACH A CHANGING PRICE CORRESPONDING TO INCREASES IN COMMERCIAL RISK: The present invention as claimed requires that the **pricing milestones correspond to an increase in commercial risk**. Pallakoff only teaches price levels which correspond to sales volumes. In Pallakoff, the “volume discount” obtained for the buying group most likely corresponds to part of the retail margin that is available for “discounting” which is expected by large purchasers. This type of discounting is normal. So really, in Pallakoff, the automated aggregation of orders is what distinguishes Pallakoff from the prior art. Pallakoff does not teach clearly a **correspondence** between commercial risk and price. The price schedule offered by the sellers may correspond to increases in commercial risk, but it could also correspond to decreases in commercial risk, as the cost of production moves down with increase in production volumes. In Pallakoff, the price moves down with increases in sales volumes; in contrast, in the present invention, the price changes (either moving up or down) as milestones are crossed, and the milestones directly relate to increases in commercial risk. This is not the simple demand based pricing of Pallakoff.

(6) PALLAKOFF DOES NOT TEACH A RANGE OF PRICES WHICH CHANGE AS PRICING MILESTONES ARE EXPERIENCED:

The present invention as claimed requires that a range of prices be established which change as pricing milestones are experienced. Pallakoff does not address the commercial realities associated with both the manufacturing and the distribution of manufactured goods. The present invention directly addresses that particular commercial reality. For manufactured goods, there are milestones in both the manufacturing phase and distribution phase which are "experienced" as time passes and the product goes from a concept to retail. Pallakoff does not provide any range of prices which change as milestones are "experienced".

(7) PALLAKOFF DOES NOT TEACH THE ENCOURAGEMENT OF TIMELY OR EARLY COMMERCIAL COMMITMENTS TO REDUCE MANUFACTURER'S RISK:

The present invention as claimed requires that the pricing milestones change to encourage timely or early commercial commitments to reduce commercial risk to manufacturing entities. Pallakoff is not specifically concerned about the timing of the commercial commitments, other than the offer closing date; the pricing milestones relate only to the sales volume. In other words, Pallakoff teaches only a single time interval which is the end of the offer, but is otherwise unconcerned with the time element. In the present invention, multiple prices are provided and each has a time interval associated with it.

(8) PALLAKOFF DOES NOT TEACH AN AVAILABILITY PERIOD IN WHICH PRICE RELATES TO SUPPLY CHAIN ACTIVITIES:

In the present invention as claimed a period of availability is required which corresponds to the cost of future supply chain activities or savings related to avoidance of future supply

chain activities and these factors are reflected in the offer price . Pallakoff does not teach or suggest that the price correspond to either of the cost of future supply chain activities or the savings related to the avoidance of future supply chain activities. Indeed, implicit in Pallakoff is the assumption of equality of price for individual buyers in a given group at a single given time, once the volume buying of the group is determined. This feature of Pallakoff represents a fundamental difference from the present invention. Pallakoff, as a consumer buyer driven system, assumes that the manufactured good will be configured in precisely the same way to all buyers and that the cost will be spread equally on a unit basis for all buyers, large and small, near and far, seller and reseller, mail order customer versus retail reseller, etc. in a fixed delivery period. It does not account for the granularity or specialized character of an offer in a sequence of milestone pricing events which flow one to the next from the particularities of what the manufacturer has to sell at particular places or times, given the supply chain being utilized. Pallakoff does not provide a means for the manufacturer to create a temporally sequenced set of offers that reflect the constraints and perceived supplier risks, in the supply milestone phases that the manufacturer has available to him on a given run of produced goods. By contrast, the present invention allows for differentiated buyers to enter in the milestone where that buyer may enjoy an advantage in, for instance, localized hauling capacity, repackaging capability, excess storage capacity on the route, etc. that is in synch with a particular portion of the supply chain, which other buyers may well find relatively less attractive or indeed not workable given the constraints of the supply chain phases remaining. The present invention seeks to create greater options for the seller to clear his production by enabling buyers to more effectively exploit localized advantages they may enjoy in the particular supply chain being utilized or upcoming on an item. As opposed to the equalization in Pallakoff of buyers

in one time window and a single delivered state for the item, the present invention enables sellers prospective and localized selling flexibility on a given load of merchandise. This flexibility, when met by different buyers' cost structures and flexibilities which enable—at the right price—buyers to handle and indeed exploit commercially the seller limitations on packaging configuration, palletization, freight, packaging, picking, packing, shipping and goods storage, etc. —creates a capability for economic gain to be realized in a new way heretofore impossible.

Applicant sets forth below a comparison between independent claim 1 and the Pallakoff reference. The left-hand column represents the patent claim, while the right-hand column represents distinctions between the claim and the Pallakoff reference. Independent claims 20 and 39 contain similar limitations, so, in order to simplify the exposition, only independent claim 1 is examined in claim chart form.

<p>1. (Currently Amended) A method of selling articles of manufacture, comprising:</p> <p>(a) providing an electronic communication system which is available to a plurality of potential purchasers of said articles of manufacture;</p> <p>(b) utilizing said electronic communication system to identify a plurality of articles of manufacture, from a plurality of manufacturing entities, which are available for purchase by said plurality of potential purchasers;</p> <p>(c) for selected ones of said plurality of articles of manufacture which are available for purchase, identifying pricing milestones in each of (1) a manufacturing phase and (2) a distribution phase, which correspond to an increase in commercial risk;</p>	<p>(c) The present invention as claimed requires that pricing milestones be provided. Pallakoff teaches a system in which the price of the goods sold goes down as the volume or number of the goods sold goes up. Essentially, these represent "volume discounts". In contrast, the present invention offers something much different than "volume discounts". The present invention utilizes "pricing milestones" which correspond to increases in commercial risk; this is quite different and much broader than "volume discounts". In the present invention, each separate price takes into account changes in commercial risk that are experienced as time passes. In the present invention, the process steps which make up</p>
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	<p>a manufacturing phase and a distribution phase are taken into account in identifying pricing milestones and attaching actual sales prices to each milestone for a particular product. The present invention as claimed requires that at least one pricing milestone be provided in each of a manufacturing phase and a distribution phase; there is certainly no teaching in Pallakoff that there be a price from each of a manufacturing phase and a distribution phase. The present invention as claimed requires that the pricing milestones correspond to an increase in commercial risk. Pallakoff only teaches price levels which correspond to sales volumes. The present invention requires that the commercial risk to manufacturing entities be reduced. Pallakoff does not teach the involvement of manufacturing entities in setting price milestones, and it does not teach how risk to manufacturing entities can be reduced.</p>
<p>(d) through prior arrangements with said plurality of manufacturing entities, determining a separate price for each of said pricing milestones to establish a range of prices for said selected ones of said plurality of articles of manufacture, taking into account a change in said commercial risk as said pricing milestones are experienced, and providing a changing price to encourage and reward timely commercial commitments and to reduce the commercial risk to said plurality of manufacturing entities;</p>	<p>(d) The present invention as claimed requires that a range of prices be established which change as pricing milestones are experienced. For manufactured goods, there are milestones in both the manufacturing phase and distribution phase which are "experienced" as time passes and the product goes from a concept to retail. Pallakoff does not provide any range of prices which change as milestones are "experienced". The present invention as claimed requires that the pricing milestones</p>

<p>(e) utilizing said electronic communication system to make conditional offers of said selected ones of said plurality of articles of manufacture for sale to said plurality of potential purchasers at each of said pricing milestones with said separate price, with said conditional offers specifying at least a minimum number of articles which must be ordered in aggregate before the conditional offer becomes binding upon a manufacturing entity;</p> <p>(f) utilizing said electronic communication system to separately communicate with particular ones of said plurality of potential purchasers and to aggregate commercial commitments from said plurality of potential purchasers for each of said pricing milestones and thereby selling said selected ones of said plurality of articles of manufacture; and</p> <p>(g) wherein each pricing milestone corresponds to a period of availability in which costs of future supply chain activities or savings related to avoidance of future supply</p>	<p>change to encourage timely or early commercial commitments to reduce commercial risk to manufacturing entities. Pallakoff teaches only a single time interval which is the end of the offer, but is otherwise unconcerned with the time element. In the present invention, multiple prices are provided and each has a time interval associated with it.</p> <p>(g) In the present invention as claimed a period of availability is required which corresponds to the cost of future supply chain activities or savings related to</p>
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chain activities are reflected in an offer price.	avoidance of future supply chain activities and these factors are reflected in the offer price. Pallakoff does not teach or suggest that the price correspond to either of the cost of future supply chain activities or the savings related to the avoidance of future supply chain activities.
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Independent Claim 20 includes limitations which are similar or identical to those identified above with respect to Claim 1. This is clear from the following highlighted copy of independent Claim 20.

20. A method of selling articles of manufacture, comprising:

(a) providing a trusted intermediary entity;

(b) providing at least one data processing system which is under the control of said trusted intermediary entity and which includes an electronic communication system which is available to a plurality of potential purchasers of said articles of manufacture;

(c) utilizing said trusted intermediary entity to qualify said plurality of potential purchasers for participation in commercial transactions utilizing said electronic communication system;

(d) utilizing said trusted intermediary to identify a plurality of articles of manufacture from a plurality of manufacturing entities;

(e) utilizing said trusted intermediary to **negotiate a conditional offer** from each of said plurality of **manufacturing entities** for each of said plurality of articles of manufacture;

(f) wherein each conditional offer specifies at least one price for each of said plurality of articles of manufacture and a minimum number which must be ordered before said conditional offer becomes binding;

(g) for selected ones of said plurality of articles of manufacture which are available for purchase, identifying a **pricing milestone** in each of (1) a **manufacturing phase** and (2) a **distribution phase**, which correspond to an **increase in commercial risk**;

(h) determining a separate aggregate minimum order number and price for each of said pricing milestones to establish a **range of different prices** for said selected ones of said plurality of articles of manufacture, **taking into account an increase in said commercial risk** as said pricing milestones are experienced, and providing a **change in price** to encourage and reward timely **commercial commitments** and to reduce the commercial risk for said plurality of manufacturing entities;

(i) utilizing said electronic communication system to offer said selected ones of said plurality of articles of manufacture for sale to said plurality of potential purchasers at each of said pricing milestones with said separate price; and

(j) utilizing said electronic communication system to offer said plurality of articles of manufacture for sale in the form of a conditional offer and to separately communicate with particular ones of said plurality of potential purchasers in order to aggregate commercial commitments from said plurality of potential purchasers and to meet said separate aggregate minimum order number for each of said pricing milestones and thereby making said conditional offer binding upon a particular

manufacturing entity of a particular one of said plurality of articles of manufacture; and

(k) wherein each pricing milestone corresponds to a period of availability in which costs of future supply chain activities or savings related to avoidance of future supply chain activities are reflected in an offer price.

Independent Claim 39 includes limitations which are similar or identical to those identified above with respect to Claim 1. This is clear from the following highlighted copy of independent Claim 39.

39. A method of selling articles of manufacture, comprising:

(a) providing a trusted intermediary entity;

(b) providing an virtual exchange which allows for a relatively direct, aggregated, and moderated series of commercial interactions between a plurality of manufacturers of articles of manufacture and a plurality of potential purchasers of said articles of manufacture, which is under control of said trusted intermediary entity;

(c) providing at least one data processing system which is under the control of said trusted intermediary entity and which includes an electronic communication system which is utilized to enable said virtual exchange and which is available to said plurality of manufacturers of said plurality of articles of manufacture for offering for sale through said virtual exchange said plurality of

articles of manufacture and to a plurality of potential purchasers of said plurality of articles of manufacture;

(d) utilizing said trusted intermediary entity to qualify said plurality of potential purchasers for participation in commercial transactions utilizing said electronic communication system;

(e) utilizing said trusted intermediary entity to **obtain production guarantees** from said plurality of manufacturers of said plurality of articles of manufacture, in the form of a **conditional offer** each of which is binding upon said plurality of manufacturers if an **aggregate minimum number** of orders is obtained in a predetermined amount of time;

(f) utilizing said electronic communication system of said virtual exchange to identify a plurality of articles of manufacture which are available for purchase by said plurality of potential purchasers through said virtual exchange;

(g) for selected ones of said plurality of articles of manufacture which are available for purchase, identifying a **pricing milestone** in **each of (1) a manufacturing phase and (2) a distribution phase**, which correspond generally to an increase in commercial risk;

(h) determining a separate price for each of said plurality of pricing milestones to establish a **range of changing prices** for said selected ones of said plurality of articles of manufacture, **taking into account a change in said commercial risk experienced by said plurality of manufacturers** of said selected ones of said

plurality of articles of manufacture as said pricing milestones are experienced, and providing a changing price to said plurality of potential purchasers to encourage and reward early commercial commitments and to reduce commercial risk to said plurality of manufacturers;

(i) utilizing said electronic communication system of said virtual exchange to offer said selected ones of said plurality of articles of manufacture for sale to said plurality of potential purchasers at each of said plurality of pricing milestones with said separate price;

(j) utilizing said electronic communication system of said virtual exchange to separately communicate with particular ones of said plurality of potential purchasers and to aggregate commercial commitments from said particular ones of said plurality of potential purchasers for each of said pricing milestones in order to meet said aggregate minimum number of orders for said selected ones of said plurality of articles of manufacture; and

(k) wherein each pricing milestone corresponds to a period of availability in which costs of future supply chain activities or savings related to avoidance of future supply chain activities are reflected in an offer price.

As demonstrated, in independent Claims 1, 20 and 39 (but not necessarily in any other, future, related, or continuation claims), the present invention require:

1. the use of pricing milestones in general;
2. the use of at least one pricing milestone from each of a manufacturing phase and a distribution phase;
3. the involvement of manufacturers in setting the pricing milestones;
4. pricing which reduces the commercial risk of manufacturing entities;
5. prices which change as commercial risk increases;
6. pricing milestones which represent a range of prices which take into account changes in commercial risk as milestones are experienced;
7. the use of pricing changes to encourage and reward timely or early commercial commitments;
8. with the pricing milestones corresponding to a period of availability in which the costs of future supply chain activities or savings related to the avoidance of future supply chain activities are reflected in the offer price.

As has been demonstrated above, Pallakoff does not teach or suggest any of these features.

SCOPE AND CONTENT OF THE SHOHAM ET AL. REFERENCE

Shoham et al. is owned by Ariba, Inc. It is directed to an on-line buyers' club system (OBCS). As stated in the Abstract, It allows for the on-line purchasing of goods and services. It is targeted at user communities consisting of a "large number of small-volume buyers." The primary function is to "automatically aggregate the buying power of these buyers." It provides a mechanism which promotes "competition among vendors."

Shoham et al. requires an intermediary which operates the OBCS and which is identified as a buyer's club facilitator (BCF).

In accordance with Shoham et al. sellers submit a "schedule." A schedule is a function which describes how low of a price at which a seller is willing to offer particular goods, depending upon the number of buyers willing to buy. Buyers then react by submitting maximum prices at which they would buy particular goods. The system of Shoham et al. then finds or determines the largest quantity and smallest price at which a "deal" can be made, possibly as buyer bids are coming in.

At Column 3 of the specification, some alternatives are discussed. These include the seller disclosing a price at which it is willing to sell, as a way of attracting interest; then, after an initial phase, the intermediary would publish to the buyer the additional quantity of buyers needed to achieve each price point.

Alternatively, Shoham et al. teaches having the seller post a price which depends upon other factors, such as the rate at which buy offers are coming in.

Shoham et al. teaches a system which is clearly a "buyer's side" system. This is clear in how Shoham et al. suggests utilizing its system to drive down prices. Applicant directs the Examiner's attention to Column 4, commencing at line 14, which reads in relevant part as follows:

"Inviting multiple sellers offers clear advantages for the buyer, both in terms of diversity of products offered and competition to drive down prices. Multiple sellers also results in a somewhat more complicated (and difficult to design) buying session, since rules need to be set up for when buyers may switch sellers and similar issues."

Shoham et al. discusses how the system determines the best price and quantity in the specification commencing at Column 4, line 41. Two types of pricing are discussed. The first is a monotonic schedule which is the most simple version. Under this approach, the system simply chooses the highest quantity (and associate scheduled price) so that there are enough willing buyers to receive the quantity of that price. The other technique which is discussed is described as a "declining posted price." This meets the situation in which the buyers want to wait until enough other buyers bid to lower the price to an agreeable level. The specification states that this can be done by "individual decision" or by "OBCS design."

In other words, the Shoham et al. system can be designed to facilitate this type of operation automatically. In either price situation, it is clear that the central purpose of Shoham et al. is to allow the aggregation of the buying power. This is clearly set forth at Column 5, commencing at line 16, which reads in relevant part as follows:

"The underlying concept of the OBCS is to aggregate buying power to negotiate a volume discount. The specification includes details about a number of specific scenarios or situations which may arise utilizing the system of Shoham et al. One situation is the selling of multiple goods by seller. Another is the submission of new schedules. Another scenario is the granting of late prices to early buyers. Another scenario is the withdrawal of buyers. Still another scenario is the switching of goods by buyers."

The specification also includes a discussion of "limit orders." None of the special situations deviate substantially from the basic teaching of Shoham et al.

THE DIFFERENCES BETWEEN SHOHAM ET AL. AND INDEPENDENT CLAIMS 1, 20, AND 39

Significant differences exist between Shoham et al. as claimed in independent Claims 1, 20 and 39. These differences are set forth below in a chart which includes the patent claim number in the left-hand column, and commentary in the right-hand column. Independent claims 20 and 39 contain similar limitations, so, in order to simplify the exposition, only independent claim 1 is examined in claim chart form.

The differences include, but are not limited to, the following:

(1) **SHOHAM ET AL DOES NOT TEACH MILESTONE PRICING**: The present invention as claimed requires that **pricing milestones** be provided. In Shoham et al the sellers submit a schedule which includes a minimum acceptable price and the buyers propose a maximum acceptable price. The buying club system determines if there is a match; however, it is not at all clear that these prices are revealed to anyone other than the intermediary system, and the prices that are offered by the sellers likely have more to do with volume discounts than actual milestones; accordingly, it is not possible to conclude that Shoham et al teaches the use of “pricing milestones”; in fact, taken as a whole, Shoham et al teaches away from this claim feature.

(2) **SHOHAM ET AL DOES NOT TEACH MILESTONES IN BOTH OF A MANUFACTURING PHASE AND A DISTRIBUTION PHASE**: The present invention as claimed requires that at least one pricing milestone be provided in **each of a manufacturing phase and a distribution phase**; Shoham et al does not teach this feature.

(3) **SHOHAM ET AL DOES NOT TEACH THE INVOLVEMENT OF MANUFACTURING ENTITIES**: The present invention as claimed requires the **involvement of manufacturing entities in establishing price milestones**; in fact, in the present invention, the manufactures alone propose the pricing

milestones, and the buyers only react to the prices offered by accepting or not accepting the manufacturer's offer. Shoham et al teaches the involvement of sellers and buyers in establishing prices and thus teaches away from the present invention. Shoham et al provides a framework for a complex negotiation between the buyers, sellers, and the intermediary. But the sellers are more removed from the process, and largely are going to react to pooled offers.

(4) **SHOHAM ET AL. DOES NOT CLEARLY TEACH HOW MANUFACTURING ENTITIES CAN REDUCE COMMERCIAL RISK:** Shoham et al. teaches that sellers can submit a "schedule" of how low a price it can go to if certain volumes are purchased. This is closely applicable to retailers or e-tailors, but there is no clear teaching about how manufacturing entities can reduce their commercial risk utilizing the system of Shoham et al.

(5) **SHOHAM ET AL DOES NOT TEACH A RANGE OF PRICES WHICH CHANGE AS PRICING MILESTONES ARE EXPERIENCED:** The present invention as claimed requires that a range of prices be established which change as pricing milestones are experienced. Shoham et al does not address the commercial realities associated with both the manufacturing and the distribution of manufactured goods. The present invention directly addresses that particular commercial reality. For manufactured goods, there are milestones in both the manufacturing phase and distribution phase which are "experienced" as time passes and the product goes from a concept to retail. Shoham et al does not provide any range of prices which change as milestones are "experienced".

(6) **SHOHAM ET AL DOES NOT TEACH THE CORRESPONDENCE OF CHANGES IN PRICE MILESTONES TO INCREASES IN COMERCIAL RISK:**

The present invention as claimed requires that the **pricing milestones correspond to an increase in commercial risk**. Shoham et al does not teach clearly such a correspondence between commercial risk and price; Shoham et al only teaches price levels which correspond to sales volumes and the buyers maximum price presumably; the price schedule offered by the sellers may correspond to increases in commercial risk, but it could also correspond to a decrease in commercial risk, as the cost of production moves down with increase in production volumes. In Shoham et al, the price likely moves down with increases in sales volumes; in contrast, in the present invention, the price changes (either moving up or down) as milestones are crossed, and the milestones directly relate to increases in commercial risk; this is not the simple demand based pricing of Shoham et al.

(7) SHOHAM ET AL DOES NOT TEACH THE ENCOURAGEMENT OF TIMELY COMMITMENTS TO REDUCE RISK: The present invention as claimed requires that the pricing milestones change to **encourage timely commercial commitments to reduce commercial risk to manufacturing entities**. Shoham et al is not specifically concerned about the timing of the commercial commitments, other than the offer closing date; the pricing milestones relate only to the sales volume; in other words, Shoham et al teaches only a single time interval which is the end of the offer, but is otherwise unconcerned with the time element. In contrast, in the present invention as claimed multiple prices are provided and each has a corresponding time interval associated with it.

(8) SHOHAM ET AL DOES NOT TEACH AVAILABILITY PERIODS IN WHICH FUTURE SUPPLY CHAIN COSTS OR SAVINGS RELATE TO PRICE: In the present invention as claimed a period of availability is required which corresponds to the **cost of future supply chain activities or savings related to**

avoidance of future supply chain activities and these factors are reflected in the offer price; Shoham et al. does not teach or suggest that the price correspond to either of the cost of future supply chain activities or the savings related to the avoidance of future supply chain activities. Indeed, implicit in Shoham et al. is the assumption of equality of price for individual buyers in a given group at a single given time, once the volume buying of the group is determined. This feature of Shoham et al. represents a fundamental difference from the present invention. As a consumer buyer driven system, Shoham et al. assumes that the manufactured good will be configured in precisely the same way to all buyers and that the cost will be spread equally on a unit basis for all buyers, large and small, near and far, seller and reseller, mail order customer versus retail reseller, etc. in a fixed delivery period. It does not account for the granularity or specialized character of an offer in a sequence of milestone pricing events which flow one to the next from the particularities of what the manufacturer has to sell at particular places or times, given the supply chain being utilized. Shoham et al. does not provide a means for the manufacturer to create a temporally sequenced set of offers that reflect the constraints and perceived supplier risks, in the supply milestone phases that the manufacturer has available to him on a given run of produced goods. By contrast, the present invention as claimed, allows for differentiated buyers to enter in the milestone where that buyer may enjoy an advantage in, for instance, localized hauling capacity, repackaging capability, excess storage capacity on the route, etc. that is in synch with a particular portion of the supply chain, which other buyers may well find relatively less attractive or indeed not workable given the constraints of the supply chain phases remaining. The present invention seeks to create greater options for the seller to clear his production by enabling buyers to more effectively exploit localized advantages they may enjoy in the particular supply chain being utilized or upcoming on an item.

As opposed to the equalization in Shoham et al. of buyers in one time window and a single delivered state for the item, the present invention enables sellers prospective and localized selling flexibility on a given load of merchandise. This flexibility, when met by different buyers' cost structures and flexibilities which enable—at the right price—buyers to handle and indeed exploit commercially the seller limitations on packaging configuration, palletization, freight, packaging, picking, packing, shipping and goods storage, etc. —creates a capability for economic gain to be realized in a new way heretofore impossible.

<p>1. A method of selling articles of manufacture, comprising:</p> <p>(a) providing an electronic communication system which is available to a plurality of potential purchasers of said articles of manufacture;</p> <p>(b) utilizing said electronic communication system to identify a plurality of articles of manufacture, from a plurality of manufacturing entities, which are available for purchase by said plurality of potential purchasers;</p> <p>(c) for selected ones of said plurality of articles of manufacture which are available for purchase, identifying pricing milestones in each of (1) a manufacturing phase and (2) a distribution phase, which correspond to an increase in commercial risk;</p>	<p>(c) The present invention as claimed requires that pricing milestones be provided. In Shoham et al. the prices that are offered by the sellers likely have more to do with volume discounts than actual milestones; accordingly, it is not possible to conclude that Shoham et al teaches the use of</p>
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<p>(d) through prior arrangements with said plurality of manufacturing entities, determining a separate price for each of said pricing milestones to establish a range of prices for said selected ones of said plurality of articles of manufacture, taking into account a change in said commercial risk as said pricing milestones are experienced, and providing a changing price to encourage and reward timely commercial commitments and to reduce the commercial risk to said plurality of manufacturing entities;</p>	<p>"pricing milestones." The present invention as claimed requires that at least one pricing milestone be provided in each of a manufacturing phase and a distribution phase; Shoham et al does not teach this feature. The present invention as claimed requires the involvement of manufacturing entities in establishing price milestones; Shoham et al. provides a framework for a complex negotiation between the buyers, sellers, and the intermediary. But the sellers are more removed from the process, and largely are going to react to pooled offers.</p> <p>(d) The present invention as claimed requires that a range of prices be established which change as pricing milestones are experienced. Shoham et al. does not address the commercial realities associated with both the manufacturing and the distribution of manufactured goods. The present invention directly addresses that particular commercial reality. For manufactured goods, there are milestones in both the manufacturing phase and distribution phase which are "experienced" as time passes and the product goes from a concept to retail. Shoham et al does not provide any range of prices which change as milestones are "experienced". In the present invention, multiple prices are provided, and each price has a time interval associated with it. The present invention as claimed requires that the pricing milestones correspond to an increase in commercial risk.</p>
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<p>(e) utilizing said electronic communication system to make conditional offers of said selected ones of said plurality of articles of manufacture for sale to said plurality of potential purchasers at each of said pricing milestones with said separate price, with said conditional offers specifying at least a minimum number of articles which must be ordered in aggregate before the conditional offer becomes binding upon a manufacturing entity;</p> <p>(f) utilizing said electronic communication system to separately communicate with particular ones of said plurality of potential purchasers and to aggregate commercial commitments from said plurality of potential purchasers for each of said pricing milestones and thereby selling said selected ones of said plurality of articles of manufacture; and</p>	<p>Shoham et al does not teach clearly such a correspondence between commercial risk and price; Shoham et al only teaches price levels which correspond to sales volumes and the buyers maximum. The present invention as claimed requires that the pricing milestones change to encourage timely commercial commitments to reduce commercial risk to manufacturing entities. Shoham et al is not specifically concerned about the timing of the commercial commitments, other than the offer closing date; the pricing milestones relate only to the sales volume.</p>
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<p>(g) wherein each pricing milestone corresponds to a period of availability in which costs of future supply chain activities or savings related to avoidance of future supply chain activities are reflected in an offer price.</p>	<p>(g) In the present invention as claimed a period of availability is required which corresponds to the cost of future supply chain activities or savings related to avoidance of future supply chain activities and these factors are reflected in the offer price; Shoham et al does not teach or suggest that the price correspond to either of the cost of future supply chain activities or the savings related to the avoidance of future supply chain activities.</p>
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Independent Claim 20 includes limitations which are similar or identical to those identified above with respect to Claim 1. This is clear from the following highlighted copy of independent Claim 20.

20. A method of selling articles of manufacture, comprising:

(a) providing a trusted intermediary entity;

(b) providing at least one data processing system which is under the control of said trusted intermediary entity and which includes an electronic communication system which is available to a plurality of potential purchasers of said articles of manufacture;

(c) utilizing said trusted intermediary entity to qualify said plurality of potential purchasers for participation in commercial transactions utilizing said electronic communication system;

(d) utilizing said trusted intermediary to identify a plurality of articles of manufacture from a plurality of manufacturing entities;

(e) utilizing said trusted intermediary to **negotiate a conditional offer** from each of said plurality of **manufacturing entities** for each of said plurality of articles of manufacture;

(f) wherein each conditional offer specifies at least one price for each of said plurality of articles of manufacture and a minimum number which must be ordered before said conditional offer becomes binding;

(g) for selected ones of said plurality of articles of manufacture which are available for purchase, identifying a **pricing milestone** in each of (1) a **manufacturing phase** and (2) a **distribution phase**, which correspond to an **increase in commercial risk**;

(h) determining a separate aggregate minimum order number and price for each of said pricing milestones to establish a **range of different prices** for said selected ones of said plurality of articles of manufacture, **taking into account an increase in said commercial risk** as said **pricing milestones** are experienced, and providing a **change in price** to encourage and reward **timely commercial commitments** and to **reduce the commercial risk** for said plurality of **manufacturing entities**;

(i) utilizing said electronic communication system to offer said selected ones of said plurality of articles of manufacture for sale

to said plurality of potential purchasers at each of said pricing milestones with said separate price; and

(j) utilizing said electronic communication system to offer said plurality of articles of manufacture for sale in the form of a conditional offer and to separately communicate with particular ones of said plurality of potential purchasers in order to aggregate commercial commitments from said plurality of potential purchasers and to meet said separate aggregate minimum order number for each of said pricing milestones and thereby making said conditional offer binding upon a particular manufacturing entity of a particular one of said plurality of articles of manufacture; and

(k) wherein each pricing milestone corresponds to a period of availability in which costs of future supply chain activities or savings related to avoidance of future supply chain activities are reflected in an offer price.

Independent Claim 39 includes limitations which are similar or identical to those identified above with respect to Claim 1. This is clear from the following highlighted copy of independent Claim 39.

39. A method of selling articles of manufacture, comprising:

(a) providing a trusted intermediary entity;

(b) providing an virtual exchange which allows for a relatively direct, aggregated, and moderated series of commercial interactions between a plurality of manufacturers of articles of manufacture and a plurality of potential purchasers of said articles of manufacture, which is under control of said trusted intermediary entity;

(c) providing at least one data processing system which is under the control of said trusted intermediary entity and which includes an electronic communication system which is utilized to enable said virtual exchange and which is available to said plurality of manufacturers of said plurality of articles of manufacture for offering for sale through said virtual exchange said plurality of articles of manufacture and to a plurality of potential purchasers of said plurality of articles of manufacture;

(d) utilizing said trusted intermediary entity to qualify said plurality of potential purchasers for participation in commercial transactions utilizing said electronic communication system;

(e) utilizing said trusted intermediary entity to **obtain production guarantees** from said plurality of manufacturers of said plurality of articles of manufacture, in the form of a conditional offer each of which is binding upon said plurality of manufacturers if an aggregate minimum number of orders is obtained in a predetermined amount of time;

(f) utilizing said electronic communication system of said virtual exchange to identify a plurality of articles of manufacture which

are available for purchase by said plurality of potential purchasers through said virtual exchange;

(g) for selected ones of said plurality of articles of manufacture which are available for purchase, identifying a **pricing milestone** in each of (1) a **manufacturing phase** and (2) a **distribution phase**, which correspond generally to an increase in commercial risk;

(h) determining a separate price for each of said plurality of pricing milestones to establish a **range of changing prices** for said selected ones of said plurality of articles of manufacture, **taking into account a change in said commercial risk experienced by said plurality of manufacturers** of said selected ones of said plurality of articles of manufacture **as said pricing milestones are experienced**, and providing a changing price to said plurality of potential purchasers to **encourage and reward early commercial commitments** and to **reduce commercial risk** to said plurality of **manufacturers**;

(i) utilizing said electronic communication system of said virtual exchange to offer said selected ones of said plurality of articles of manufacture for sale to said plurality of potential purchasers at each of said plurality of pricing milestones with said separate price;

(j) utilizing said electronic communication system of said virtual exchange to separately communicate with particular ones of said plurality of potential purchasers and to **aggregate commercial commitments** from said particular ones of said plurality of

potential purchasers for each of said pricing milestones in order to meet said **aggregate minimum number of orders** for said selected ones of said plurality of articles of manufacture; and

(k) wherein each pricing milestone corresponds to a period of availability in which costs of future supply chain activities or savings related to avoidance of future supply chain activities are reflected in an offer price.

TRAVERSE OF THE EXAMINER'S COMBINATION OF REFERENCES

The Examiner rejected independent Claims 1, 20, 39 based on three different combinations of the prior art.

These include (1) a combination of Walker et al. and Duke; (2) a combination of Walker et al., Pallakoff., and Duke; and (3) a combination of Walker et al., Pallakoff, Duke, and Shoham et al.

Applicant will address first the Examiner's rejection of independent Claims 1, 20 and 39 in the order identified above, even though that is not the order that the Examiner presented the rejections.

THE PROPOSED COMBINATION OF WALKER ET AL. AND DUKE

On page 6 of the office action, the Examiner rejects Claims 1, 20 and 39 based on a combination of Walker et al. and Duke. The Examiner states that Walker et al. teaches pricing milestone but does not specifically teach that the pricing suggested be based on future supply chain activities or avoidance of future supply chain activities. In fact, Walker et al. does not teach "pricing milestones." Walker et al. is an extension of the basic priceline.com approach for reverse auction selling of services such as airline tickets, rental cars, and hotel rooms. Walker et al. depends upon the buyer submitting "conditional purchase offers." These can be highly constrained as is clear from the specification of Walker et al. The conditions have more to do with the purchaser's requirements than any "pricing milestones." For example, travelers have only a certain amount of flexibility in arrival and departure dates on most business travel. The conditions imposed by potential buyer in Walker et al. have nothing to do with "pricing milestones" and everything to do with the practical realities of that buyer's schedule or other requirements.

Additionally, in accordance with Walker et al., sellers also have complex rules which determine whether or not conditional purchase offers can be accepted. For example, Figure 10 of Walker et al. depicts a set of rules which constrain particular offers. Many things go into determining whether or not an airline will sell a ticket at a particular price. These include many factors such as the airlines' yield management formula, but also due to the number of flights, the seating capacity of each flight, and the bookings of other travelers. In summary, it is difficult to interpret Walker et al. as teaching anything about pricing milestones.

The Examiner suggests combining Walker et al. with Duke, stating specifically that Duke teaches "pricing milestones (Penetration and experience curve and Geographic pricing page 6 and 7)." Applicant traverses this interpretation of Duke. Duke does not have any specific teaching with respect to pricing milestones. In fact, Duke has no specific teaching whatsoever. As has been outlined above in the overview of the Duke article, Duke proposes a modified Tellis price matrix which takes the existing three-by-three, two-dimensional matrix of Tellis and imposes another "dimension" upon it. This other dimension takes into account particular pricing strategies. A variety of different pricing strategies are discussed in Duke including random discounting, periodic discounting, second market discounting, price signaling, reference pricing, penetration, experience curve, geographic pricing, image pricing, price bundling, premium pricing, and complimentary pricing. In its own terms, Duke does not provide any **particular** strategy and provides merely an **analytical framework** through which pricing decisions can be **considered**.

The Examiner states that it would have been obvious to one having ordinary skill in the art to include in Walker et al. the "pricing strategies" as taught by Duke, stating that this is so because "this would assure that a product is

substantially funded through guaranteed orders before production starts. " Applicant traverses this conclusion since Walker et al. does not remotely teach or suggest anything about "pricing milestones," and further since Duke provides merely an analytical framework with over a dozen different pricing strategies discussed therein.

There is no teaching or suggestion in Duke which would lead one to combine Duke with Walker et al. There is certainly no specific teaching or suggestion in Duke which would imply to one of ordinary skill that suggested combination of references.

Even if Walker et al and the Duke article could be combined, they would not teach or suggest the present invention as a whole. As claimed in the present application (but not necessarily in any other, future, related, or continuation patent applications), the present invention requires:

1. the use of pricing milestones in general;
2. the use of at least one pricing milestone from each of a manufacturing phase and a distribution phase;
3. the involvement of manufacturers in setting the pricing milestones;
4. pricing which reduces the commercial risk of manufacturing entities;
5. prices which change as commercial risk increases;
6. pricing milestones which represent a range of prices which, when taken into account, changes in commercial risk as milestones are experienced;
7. the use of pricing changes to encourage and reward timely or early commercial commitments;
8. with the pricing milestones corresponding to a period of availability in which the costs of future supply chain activities or savings related to the avoidance of future supply chain activities are reflected in the offer price.

THE PROPOSED COMBINATION OF WALKER ET AL., PALLAKOFF, AND DUKE

On page 4 of the office action, the Examiner rejects independent Claims 1, 20 and 39 as being obvious in view of a combination of Walker et al., Pallakoff, and Duke. The Examiner states that Walker et al. does not specifically teach creating "pricing in accordance with financial risk." The Examiner contends that Pallakoff "teaches different threshold pricing for different levels of risk (FIG 4)." Pallakoff, of course, is the patent which covers the commercial activities of Mobshop.com. The purpose of Pallakoff is very narrow, namely to obtain volume discounts for buyers acting as a group. In fact, Pallakoff does not teach "different threshold pricing for different levels of risk" as proposed by the Examiner. While it is clear that the sellers are free to associate different prices with different sales volumes, there is no discussion in Pallakoff about the manufacturer's risk, so there can be no teaching or suggestion based on Pallakoff about associating different pricing levels for different levels of risk.

Even if Walker et al, the Duke article and Pallakoff could be combined, they would not teach the invention as a whole. As claimed in the present application (but not necessarily in any other, future, related, or continuation patent applications), the present invention requires:

1. the use of pricing milestones in general;
2. the use of at least one pricing milestone from each of a manufacturing phase and a distribution phase;
3. the involvement of manufacturers in setting the pricing milestones;
4. pricing which reduces the commercial risk of manufacturing entities;
5. prices which change as commercial risk increases;
6. pricing milestones which represent a range of prices which take into account changes in commercial risk as milestones are experienced;

7. the use of pricing changes to encourage and reward timely or early commercial commitments;
8. with the pricing milestones corresponding to a period of availability in which the costs of future supply chain activities or savings related to the avoidance of future supply chain activities are reflected in the offer price.

**THE PROPOSED COMBINATION OF WALKER ET AL., PALLAKOFF, DUKE
AND SHOHAM ET AL**

On page 4 of the office action, the Examiner rejects Claims 1, 20, and 39 based on a combination of Walker et al., Pallakoff, Duke, and Shoham et al. The Examiner states that a combination of Walker et al., Pallakoff, and Duke teaches "milestone pricing." Applicant has traversed this contention in the prior sections. However, the Examiner states that the combination of Walker et al., Pallakoff, and Duke does not "specifically mention that they specified a minimum number of an order." The Examiner relies upon Shoham as teaching "price variability according to quantities sold (FIG 6)." Applicant admits that Shoham et al. does teach the specification of a minimum number of an order. However, Applicant traverses the combination of references. Even if the references can be combined, they do not teach the specific combination elements of independent Claims 1, 20 and 39. As claimed in the present application (but not necessarily in any other, future, related, or continuation patent applications), the present invention requires:

1. the use of pricing milestones in general;
2. the use of at least one pricing milestone from each of a manufacturing phase and a distribution phase;
3. the involvement of manufacturers in setting the pricing milestones;
4. pricing which reduces the commercial risk of manufacturing entities;
5. prices which change as commercial risk increases;
6. pricing milestones which represent a range of prices which take into account changes in commercial risk as milestones are experienced;
7. the use of pricing changes to encourage timely commercial commitments;

8. with the pricing milestones corresponding to a period of availability in which the costs of future supply chain activities or savings related to the avoidance of future supply chain activities are reflected in the offer price.

THE REJECTION OF THE DEPENDENT CLAIMS

The Examiner makes five (5) specific rejections of the dependent claims. Each will be considered separately below.

THE FIRST REJECTION: First, the Examiner rejects claims 5, 24, and 43 based on a combination of Walker et al, Pallakoff, Duke, and Tozzoli et al, stating that Tozzoli et al teaches “qualifying both buyers and sellers” citing column 10, lines 10-15.

Applicant admits that Tozzoli et al does teach the qualifying of both buyers and sellers. However, since claims 5, 24, and 43 depend upon independent claims which are allowable over the prior art, Applicant requests allowance of these claims.

THE SECOND REJECTION: Second, the Examiner rejects claims 8, 27 and 46 based on a combination of Walker et al. and Shkedy, stating that Shkedy teaches pooling offers of a plurality of buyers to arrive at a large order that can be submitted to a manufacturer.

Applicant incorporates by reference its prior comments and observations regarding Shkedy, but has the following additional observations.

Shkedy et al. is directed to a system which utilizes a computer acting as an intermediary to facilitate a transaction between a plurality of buyers and at least one seller. The buyer determines an item or service which is to be purchased and provides to the computer a “conditional purchase order” for

the item or service. Individual buyer's purchase orders are aggregated into one or more "collective purchase orders." The collective purchase orders are utilized to solicit sellers to bid on the collected purchase orders.

Figure 1 provides an overview of the architecture employed by Shkedy. Figure 2 depicts a central controller of Shkedy. Figure 2a is a flowchart representation which illustrates a method of creating a "forward purchase order" which is included into a "PPO" database. It is clear from the specification and Figure 2a that "the forward purchase order" corresponds to the "conditional purchase order" which is input by the buyer.

With reference to Figure 2a, at step 50, the buyer has identified the goods or services that he or she desires and has transmitted the "completed FPO" to the central controller. Next, in step 54, the central controller determines a maximum offer price, and transmits the maximum offer price back to the buyer for approval. In step 56, the buyer either accepts or rejects the maximum offer price. If the maximum offer price is accepted, in accordance with step 60, the central controller includes the buyer's FPO into a specified "pool purchase order (PPO)."

The "forward purchase order" can be understood with reference to specific examples provided in Shkedy. Applicant directs the Examiner's attention to Column 5, commencing at line 31, which reads in relevant part as follows:

"A typical buyer created forward purchase order FPO 100, could, for example, specify that the buyer wishes to purchase two dozen BIC medium point black roller ball pens and one dozen BIC medium point blue roller ball pens. The buyer can also specify that he wants to participate in the Friday November 6, 1998 at 12:00 pm EST pool, and needs the goods delivered no later than Tuesday Nov 10 1998. Instead of specifying a delivery date, a buyer could optionally be satisfied with the

earliest possible delivery date for the item or service in question.”

It is further clear that a “forward purchases order” is the conditional offer which is transmitted by the buyer prior to the buyer’s approval of a maximum price. Applicant directs the Examiner’s attention to Column 5, commencing at line 47, which reads in relevant part as follows:

“Step 56 is a determination step for the buyer 16 to decide whether he is willing to accept the maximum offer price provided by the central controller 200. If not, the FPO creation process terminates at step 58. Otherwise, if the buyer accepts the maximum offer price his FPO will be included in the pool purchase order by transmitting his attention to accept to the central controller 200. The buyer has now consented to entering into a legally binding contract with the intermediary and will accept the best price that the intermediary determines in the bidding process subject to the condition that the buyer will pay no more for the item or service than the stipulated maximum offer price.”

Accordingly, the intermediary acts as an agent for the buyers to negotiate with sellers in order to negotiate a price which is at least as good as the maximum accepted price, but which may be better. Note that there is no price certainty in Shkedy.

The Shkedy specification continues at Columns 5, 6, and 7 in discussing some of the mechanical aspects of handling pooled purchase orders. Some of the issues include authenticating the buyer’s credit, displaying PPO information, notifying buyers of status of PPO, the sending of bids to potential sellers, the sending of purchase confirmations, communication means used to implement the invention, payment systems which may be utilized, off-line embodiments which are alternatives to the preferred on-line embodiment, and the use of cryptographic protocols to secure communications.

Commencing at Column 7, line 13 a variety of alternative embodiments are discussed. These alternatives include: (1) the use of intelligent software agents to accomplish some or all of the communications.; (2) and embodiment which the buyers communicate a minimum discount off the maximum price that buyer would be willing to accept; (3) a pre-negotiation by an intermediary of a supply contract of a major supplier; (4) an authorization process in which the buyer authorization is split into a multiple-signing process, taking into account the hierarchical structure of large corporations which require multiple authorizations for purchase orders; (5) the utilization of three separate servers in lieu of a single server in order to perform separate operations; (6) an embodiment in which buyers would select a second or substitute item in addition to a primary item; (7) an embodiment in which the central controller does not specify a maximum offer price but instead specifies a commission or cancellation fee to the buyer for entering the pool; (8) a system which does not require monetary payment, which instead allows a barter exchange; and (9) a system which includes mechanisms for resolving disputes between buyers and sellers.

Applicant admits that Shkedy does teach the pooling of orders. However, the combination of the features of the independent claims and dependant claims 8, 27, and 46 represent a novel combination of features. Additionally, since claims 8, 27 and 46 dependent upon independent claims which are patentably distinct over the prior art, Applicant respectfully requests allowance of these claims.

THE THIRD REJECTION: Third, the Examiner rejected claims 14, 33 and 52 based on Walker et al. and official notice. Applicant has cancelled these claims so they are no longer in issue.

THE FOURTH REJECTION: Fourth, the Examiner has rejected claims 18, 37 and 39 based on a combination of Walker et al. and Shkedy, stating that Shkedy teaches “pooling orders and communicating those orders to potential sellers,” citing column 4, lines 50-67. Applicant admits that Shkedy teaches the pooling of orders and the communication of those orders to potential sellers, but traverses the rejection based on a combination of these references. The combination of features of the independent claims and dependent claims 18, 37, and 39 is a novel combination. Additionally, since claims 18, 37 and 39 depend upon independent claims which are patentably distinct over the cited art, Applicant respectfully requests allowance of those claims.

THE FIFTH REJECTION: Fifth, the Examiner rejected Claims 19, 38, 39 and 56 based on a combination of Walker et al. and Shkedy, stating that Shkedy teaches production guarantees from potential manufactures. Applicant admits that Shkedy teaches production guarantees, but traverses the rejection based on a combination of these references. The combination of the features of the independent claims and dependent claims is a novel combination. Additionally, since claims 19, 38, 39 and 56 depend upon independent claims which are patentably distinct over the cited prior art, Applicant respectfully requests allowance.

THE FOURTH REJECTION: Fourth, the Examiner has rejected claims 18, 37 and 39 based on a combination of Walker et al. and Shkedy, stating that Shkedy teaches “pooling orders and communicating those orders to potential sellers,” citing column 4, lines 50-67. Applicant admits that Shkedy teaches the pooling of orders and the communication of those orders to potential sellers, but traverses the rejection based on a combination of these references. The combination of features of the independent claims and dependent claims 18, 37, and 39 is a novel combination. Additionally, since claims 18, 37 and 39 depend upon independent claims which are patentably distinct over the cited art, Applicant respectfully requests allowance of those claims.

THE FIFTH REJECTION: Fifth, the Examiner rejected Claims 19, 38, 39 and 56 based on a combination of Walker et al. and Shkedy, stating that Shkedy teaches production guarantees from potential manufactures. Applicant admits that Shkedy teaches production guarantees, but traverses the rejection based on a combination of these references. The combination of the features of the independent claims and dependent claims is a novel combination. Additionally, since claims 19, 38, 39 and 56 depend upon independent claims which are patentably distinct over the cited prior art, Applicant respectfully requests allowance.

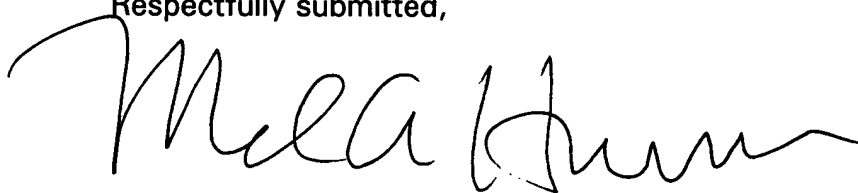
CONCLUSION

Applicant believes that it has met all of the requirements of the last office action and respectfully requests allowance of the pending claims.

In this and prior responses, all references to "the invention" or "the present invention" refer to the invention as claimed in this particular application only, and it is not intended to apply to any related patent applications (such as, but not limited to, divisionals, continuations, continuations-in-part, reissues, or reexaminations).

If any additional fees are required, please charge Deposit Account No. 50-1060.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Melvin A. Hunn", written over a horizontal line.

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